MASON'S
SHORT TARIFF HISTORY
OF
THE UNITED STATES.

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A SHORT

Tariff History of the United States

FROM THE EARLIEST TO THE PRESENT TIME.

PART I.—1783 TO 1789.

WITH A PRELIMINARY VIEW.

Disastrous outcome of the only trial of nearly absolute Free Trade between the United States and foreign countries.—Nature and extent of the Protecting Power, with proofs that the Power, as conferred in the Constitution, was alien to every purpose of raising a revenue.

EACH PART COMPLETE IN ITSELF.

By DAVID H. MASON.

Late Tariff Editor of the Chicago Inter Ocean.
Author of "How Western Farmers are Benefited by Protection," "Treaty Tariffs are Unconstitutional," Etc.

"PROVE ALL THINGS; HOLD FAST THAT WHICH IS GOOD."—*I Thess., ch. v., 21.*

PUBLISHED BY THE AUTHOR.

HF
1753
M36

CHICAGO:
460 West Randolph Street.
1884.

240591

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PRINTED BY
DONOHUE & HENNEBERRY,
CHICAGO.

TO

C. G. HUSSEY, ESQ.,

of Pittsburgh,

One of the most unselfish and devoted friends of

Tariff-Protection,

This work is inscribed as a formal expression of the Author's respect, admiration and regard.

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PREFACE.

THE subject of this work is a matter of controversy, and the object is to convince the popular mind; hence, the usual form of history—that is to say, simple narrative—is obviously unsuited to the purpose now in view. I have chosen, therefore, the form of a trial before the High Court of Public Opinion, of which Truth is Chief Justice, and Reason and Common Sense are the Associate Justices—a case in which Protection appears as plaintiff, and Anti-protection, *alias* Free Trade, as defendant; and in which the principal witnesses examined are the children of Experience, while the author acts as counsel for the plaintiff. The American people constitute the jury, and will determine their verdict by ballot.

This, the first part of the work, embraces the most important period in our tariff history, because it was then that the United States, for the first and only time, made a practical trial of free trade—of a free trade with foreign nations so nearly absolute as to make the existing custom house policy of England seem, by contrast, the very soul of restriction. The disastrous outcome of that experiment is set up in these pages as a solemn warning to the present and to the future.

In addition, copious proofs are offered to show that the Federal Convention, in framing the Constitution, granted to Congress both the revenue power and the protecting power; and that the purpose of revenue was alien to the latter power, as then understood, practiced

and conferred; so much so, indeed, that "a tariff for revenue only" would be a defeat of the meaning and intent of that power.

I have undertaken this history after wide, tedious, painstaking research, extended through as many years as there were colonies joined in the revolutionary war; and I have written this part of the work with conscientious and vigilant regard for the exact truth. So far as I am aware, not a fact has been overstated, not a consequence has been exaggerated. Instead, I think I can justly claim, metaphorically, to have dug down to the original protecting power through nearly a century of eruptive overflow from the volcanic discussions of the tariff question; and to have laid bare the distinct outlines of that buried and forgotten Herculaneum of the Constitution, which was as familiar as their own doorsteps to the first generation of American statesmen.

But entire unanimity of views is not to be realized on any subject whatever. I expect to find readers who will continue unconvinced, despite the heavy array of proofs; yet I shall be much gratified to have such persons, each and all, communicate to me direct the ground of objection; also, to have all printed criticisms mailed to my address given below. No one can be more anxious than myself to be convicted of error, if error can be pointed out; for I have been at the utmost pains to avoid error.

DAVID H. MASON,
460 West Randolph St., Chicago, Illinois.

A Short Tariff History of the United States from the Earliest to the Present Time.

INTRODUCTORY.

This history, of which the following chapters constitute the first part, is intended to prove conclusively the following propositions, which the reader is urged to keep constantly in mind, as the central object of the whole record:

All the prosperity enjoyed by the American people—absolutely all the prosperity, without any reservation whatever—from the foundation of the United States government down to the present time, has been under the reign of protective principles; and all the hard times suffered by the American people, in the same period, has been preceded either by a heavy reduction of duties on imports, or by insufficient protection, thus refuting all free-trade theories on the subject.

CHAPTER I.

PRELIMINARY VIEW.

The alienation of the American colonies from the mother country was very largely due to her tyrannical policy of refusing to them permission to manufacture their own raw materials for their own uses. She passed restrictive laws of the most sweeping kind, enforced by

severe penalties, with the avowed design to reduce the colonists to abject dependence on the parent state for their necessary supplies of manufactured articles, and with the result of subjecting the victimized people to industrial bondage. The inevitable tendency of this system was to constitute Great Britain the almost sole buyer of America's raw produce, and the almost sole seller of the fabrics to be given in exchange for it, with increasing power to fix the prices of both. A thorough understanding of this self-aggrandizing scheme is essential to a thorough understanding of the American system of legislative protection to home industry — its aim, its mode of operation, its present attitude. Without such comprehension it is impossible to find the key which will unlock all the meaning of the tariff problem. Marked prominence is therefore given to an exhibit of the animus which actuated the colonial policy of the British government — its tremendous self-seeking, its vile disregard of the commonest principles of equity, its trampling under foot of the rights of labor; all to feed fat an unscrupulous greed for gain, and gluttonously to satisfy a voracious appetite for power and dominion.

Henry C. Carey (in his work, "The Slave Trade, Domestic and Foreign," page 95) has condensed into a single paragraph the main points of the principal measures to subordinate the interests of the colonies on this continent and elsewhere to the interests of the mother country. He says:

> The first attempt at manufacturing any species of cloth in the North American provinces produced a resolution on the part of the House of Commons (1710) that the erecting of manufactories in the colonies had a tendency to lessen their dependence on Great

Britain. Soon afterward complaints were made to Parliament that the colonists were establishing manufactories for themselves, and the House of Commons ordered the Board of Trade to report on the subject, which was done at great length. In 1732 the exportation of hats from province to province was prohibited, and the number of apprentices to be taken by hatters was limited. In 1750 the erection of any mill or other engine for splitting or rolling iron was prohibited; but pig iron was allowed to be imported into England duty free, that it might be there manufactured and sent back again. At a later period Lord Chatham declared that he would not permit the colonists to make even a hobnail for themselves; and his views were then and subsequently carried into effect by the absolute prohibition, in 1765, of the export of artisans; in 1781 of woolen machinery; in 1782 of cotton machinery and artificers in cotton; in 1785 of iron and steel making machinery and workmen in those departments of trade; and in 1799 by the prohibition of the export of colliers, lest other countries should acquire the art of mining coal.

Thomas Jefferson, commenting on the parliamentary legislation repressive of colonial industry, and intended to aggrandize Great Britain at the expense of her dependencies, expressed himself boldly and emphatically thus:

That to heighten still the idea of parliamentary justice, and to show with what moderation they are likely to exercise power where *themselves* are to feel no part of its weight, we take leave to mention to his Majesty certain other acts of the British Parliament, by which we were prohibited from manufacturing for our own use the articles we raise on our own lands with our own labor. By an act passed in the fifth year of the reign of his late Majesty, King George II., an American subject is forbidden to make a hat for himself of the fur which he has taken, perhaps, on his own soil—an instance of despotism to which no parallel can be produced in the most arbitrary ages of British history.

By one other act, passed in the twenty-third year of the same reign, the iron which we make we are forbidden to manufacture; and heavy as that article is, and necessary in every branch of hus-

bandry, besides commission and insurance, we are to pay freight for it *to* Great Britain, and freight for it *back* again, for the purpose of supporting, not *men*, but *machines*, in the island of Great Britain.

What Adam Smith, the father of the science of political economy, thought of such measures in relation to colonies is thus stated (book IV., chap. VII.) in his famous work on "The Wealth of Nations," first published in 1776:

To prohibit a great people, however, from making all they can of every part of their own produce, or from employing their stock and industry in a way that they judge most advantageous to themselves, is a manifest violation of the most sacred rights of mankind.

The slavish dependence forced in this arbitrary and heartless way upon the colonists was very galling. When, after many unsuccessful efforts, they discovered that their various attempts to obtain redress led only to additional and cumulative restraints, they yielded to feelings of insubordination; and, as their resentment at the injustice and monopoly control of the mother country became more and more exasperated, a growing disposition was manifested to retaliate for the wrongs suffered at her hands, by refusing to buy or consume British goods. At the outset, this patriotic resolve was limited to voluntary associations, which pledged their members to non-importation agreements. But, when the Continental Congress assembled (September 5, 1774) in Philadelphia, this mode of resistance had assumed, in the popular mind, the aspects of a principle of national action. A brief sketch of the proceedings of that body appears in the first volume of Elliot's "Debates on the Federal Constitution," in a preliminary paper,

entitled "Gradual Approaches toward Independence," from which the following detached passages are quoted:

On the nineteenth of September (1774) it was unanimously resolved that the Congress request the merchants and others, in the several colonies, not to send to Great Britain any orders for goods, and to direct the execution of all orders already sent to be delayed or suspended until the sense of the Congress on the means to be taken for the preservation of the liberties of America should be made public.

On the twenty-seventh of September the Congress unanimously resolved that, from and after the first of December, 1774, there should be no importation into British America, from Great Britain or Ireland, of any goods, wares, or merchandise exported therefrom; and that they should not be used or purchased if imported after that day. On the thirtieth of September it was further resolved that, from and after the tenth of September, 1775, the exportation of all merchandise, and every commodity whatsoever, to Great Britain, Ireland, and the West Indies ought to cease, unless the grievances of America should be redressed before that time.

On the sixth of October (1774) it was resolved to exclude from importation, after the first of December following, molasses, coffee, or pimento from the British plantations, or from Dominica; wines from Madeira and the Western Islands; and foreign indigo.

On the twentieth day of October (1774) the non-importation, non-consumption, and non-exportation agreement was adopted and signed by the Congress. This agreement contained a clause to discontinue the slave trade, and a provision not to import East India tea from any part of the world. In the article respecting non-exportations, the sending of rice to Europe was excepted. In general, the association expressed a determination to suppress luxury, encourage frugality, and *promote domestic manufactures.* The agreement was dated the twenty-fourth of October.

On the seventeenth of May (1775) it was unanimously resolved that all exportations to Quebec, Nova Scotia, the Island of St. John's, Newfoundland, Georgia (except the parish of St. John's), and to East and West Florida immediately cease, and that no provision of any kind, or other necessaries, be furnished to the British

fisheries on the American coasts until it be otherwise determined by the Congress.

At the same time (July 31, 1775), it was made the duty of a committee, in the recess of Congress, *to inquire into the cheapest and easiest methods of making salt in the country, and to make inquiry after virgin lead and leaden ore, etc.*

On the first of August Congress adjourned to the fifth of September, 1775, having first passed a resolution declaring the non-exportation and non-importation association to comprise the islands of Jersey, Guernsey, Sark, Alderney, and Man, and every European island and settlement within the British dominions, as well as all the West India Islands, British and foreign, to whatever state, power or prince belonging, or by whomsoever governed; and also Somers's Islands, Bahama Islands, Herbicia, and Surinam, on the Main, and every island and settlement within the latitude of the southern line of Georgia and the equator.

On the twenty-first of March (1776) Congress recommended to the several provincial assemblies *to exert their utmost endeavors to promote the culture of hemp, flax, and cotton, and the growth of wool, in the United Colonies; to take the earliest measures for erecting and establishing, in each colony, a society for the improvement of agriculture, arts, manufactures, and commerce; and forthwith to consider of the ways and means of introducing and improving the manufactures of duck, sail-cloth, and steel.*

These extracts show very distinctly that industrial independence and political independence were regarded, even at that early day, as the vital halves of a consistent whole. The Revolutionary war was not fought out for the sole purpose of gaining political independence. Industrial considerations entered into that contest quite as fully as political considerations, and substantially involved the idea expressed by Thomas Jefferson in his letter to Benjamin Austin, in 1816: "Experience has taught me that manufactures are now as necessary to our independence as to our comfort." It was the strong desire of the colonists to be set free from their helpless

and debasing reliance on Great Britain for their manufactured supplies, so that they might manufacture their own raw materials without hindrance, and enjoy to the full the development of their native resources, which lay at the bottom of the great struggle. Here is to be found the germ of our protective system—a germ which became the creative principle in forming "a more perfect Union," and in enacting the tariff of 1789, as measures of deliverance from industrial bondage to Great Britain.

CHAPTER II.

UNDER THE CONFEDERATION.

The foreign trade of the American colonies had been almost entirely with Great Britain and her West India possessions, and consisted, with very few exceptions, in the exportation of raw materials and the importation of manufactures. Shipbuilding, however, had become an established and thrifty industry, in consequence of the abundance and cheapness of suitable timber in the new world. A considerable amount of tonnage had been sold every year in Europe. But the Revolutionary war, by arresting commercial intercourse with other countries, radically changed the former circumstances, and threw the colonists very largely upon their native resources for their necessary supplies. This long interruption of foreign trade operated with the force and effect of a protective tariff in developing the manufacturing powers of the people, so that, at the close of hostilities, the manufacture of indispensable articles had expanded to a remarkable degree in such of the States as possessed the requisite materials and skilled labor. Those great instrumentalities in science and mechanism which have revolutionized the industrial processes of the world had not then been discovered or invented. Machinery, therefore, was scanty in quantity and crude in kind. Almost all of the manufacturing was confined to the household, in the various branches of spinning, weaving, knitting, and dyeing. But, in addition to this diversified aggregate of fireside manual industry, there was a long list of the mechanic arts

carried on generally in small establishments. Extensive factories, rolling mills, and workshops, such as are plentiful to-day, then had no existence in America.

The peace of 1783 swept away the stimulating influences exerted by the war, and precipitated on the then independent States the multiform evils of unrestrained foreign competition. By the fourth article of the Articles of Confederation, ratified in Philadelphia by delegates of the thirteen colonies, July 9, 1778, it was stipulated as follows:

> The people of each State shall have free ingress and regress to and from every other State, and shall enjoy therein all the privileges of trade and commerce subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State, of which the owner is an inhabitant.

As Congress had no authority to enact a general tariff on imports without the consent of every one of the States, and as this authority was steadily refused, the result of the above provisions was that virtual free trade prevailed with foreign countries, from the peace of Paris until August 1, 1789, when the first tariff act under "the more perfect Union" went into effect. Each State thought itself competent to regulate its own commerce, external and internal; sought by its own separate import laws and navigation acts to serve its own particular interests, without at all considering the interests of the other States; and they in this way impeded or defeated one another's measures. Matthew Carey, in "The New Olive Branch" (page 32), says:

> At the close of the Revolutionary war the trade of America was free and unrestrained in the fullest sense of the word, accord-

ing to the theory of Adam Smith, Say, Ricardo, the Edinburgh Reviewers, and the authors of the Encyclopædia. Her ports were open, with scarcely any duties, to the vessels and merchandise of all other nations.

The rate of duties in Pennsylvania was only two and a half per cent. Even these were nugatory, because there was a free port established at Burlington by the State of New Jersey, where goods intended for Philadelphia were entered and conveyed over to this city clandestinely. The same fraudulent scenes were enacted in other States, and thus trade was, as I have stated, wholly free.

Bancroft, in his "History of the Formation of the Constitution" (Vol. I., p. 175), says:

The harbor at the mouth of the Hudson was at that time [1784] the most convenient port of entry for New Jersey and Connecticut, and the State of New York, through its custom house, levied on their inhabitants as well as on its own an ever increasing revenue by imports. The collector was a stubborn partisan.

The irritating persistency in seeking local advantage, and this spirit of retaliation, increased with the lapse of time. Otto, the French minister at New York, wrote home to his government, under date of March 17, 1786, what follows:

While the different States are active in granting the requisition of last September, and also a duty of five per cent upon all importations, Congress has been informed that New Jersey had suddenly recalled the powers which it had already given, and that it had refused to levy its contingent for the expenses of the Confederation. The motive for this revolting conduct was jealousy, on the part of New Jersey, of New York, which by its position enjoys an advantage on a great part of its commerce, and which, by means of its customs duties, levies a sort of impost upon New Jersey and Connecticut. New York, not having acceded to the resolutions of Congress, derives a great advantage from its customs, and obliges its neighbors, which have no large commercial towns, to pay a part of the expenses of its government. * * * The

Assembly of New Jersey has just repealed its resolutions; and, to force New York to submit to the wish of Congress, it establishes a free port at Paulus Hook, lying to the west of the mouth of the North river, opposite New York. This port can do great damage to the commerce of that State, and it is hoped that a measure so decisive, the appeals of the members of the Union, and the activity of Congress, seated in that city, will finally prevail in changing its system.

On the same subject and the evil results Young says, in his "National Economy" (p. 15):

Although the States were politically independent, it was impossible to countervail the policy of other nations. Each State having, under the Confederation, the right to regulate its own trade, it imposed upon foreign productions, as well as those of its sister States, such duties as its own interests seemed to dictate. The States attempted, by their separate navigation laws, to secure their trade to their own vessels; and the selfish policy of some States counteracted the efforts of others. As the Congress had no power to lay duties or regulate trade, and as the States could not agree upon a uniform rate of duties, foreign nations passed such laws as they judged most likely to destroy our commerce and extend their own.

Especially was this the policy of Great Britain. Our trade with her West India colonies was prohibited; and, by the enforcement of her navigation acts, our navigation was nearly destroyed. Foreign vessels and goods being freely admitted into the States, while ours were burdened with heavy duties in foreign ports, both the prices of goods imported and the prices of our exports were subject to the will of foreigners; and the money of our citizens was rapidly passing into the pockets of British manufacturers and merchants. In describing the state of the country at that time, a distinguished American statesman thus remarks:

"In the comparative condition of the United States and Great Britain, not a hatter, a boot or shoemaker, a saddler, or a brass founder could carry on his business, except in the coarsest and most ordinary productions of their various trades, under the pressure of this foreign competition. Thus was presented the

extraordinary and calamitous spectacle of a successful revolution wholly failing of its ultimate object. The people of America had gone to war, not for names, but for things. It was not merely to change a government administered by kings, princes, and ministers for a government administered by presidents, and secretaries, and members of Congress. It was to redress their own grievances, to improve their own condition, to throw off the burden which the colonial system laid on their industry. To attain these objects, they endured incredible hardships, and bore and suffered almost beyond the measure of humanity. And when their independence was attained, they found it was a piece of parchment. The arm which had struck for it in the field was palsied in the workshop; the industry which had been *burdened* in the colonies was *crushed* in the free States; and, at the close of the Revolution, the mechanics and manufacturers of the country found themselves, in the bitterness of their hearts, independent — and *ruined*."

The inundation of foreign goods which took place under these circumstances, and the deplorable consequences which followed, are thus described by Matthew Carey, in the "New Olive Branch" (p. 34):

From almost every nation in Europe large shipments were made to this country—many of them of the most ludicrous kind, which implied an utter ignorance of the wants, the situation, and the resources of the United States. Among the rest the recesses of Monmouth street, in London, and Plunket street, in Dublin, the receptacles of the cast-off clothes of the two metropolises, were emptied of a portion of their contents; for it was supposed that the war had rendered the nation destitute of everything, even of covering. Happy was the man who could send "a venture," as it was called, to this country, which the misguided Europeans supposed an El Dorado, where everything was to be converted into gold with a cent per cent profit at least. Goods often lay on the wharves for many days for want of store-room. House rent rose to double and treble the former rates. The importers and consignees at first sold at great advances, and believed they were rapidly indemnifying themselves for the deprivations and sufferings of the war.

But these glorious times soon came to a close, like those of 1815. From "day-dreams" and delusive scenes of boundless wealth, the citizens awoke to pinching misery and distress. The nation had no mines to pay her debts. And industry, the only legitimate and permanent source of individual happiness, and national wealth, power, and resources, was destroyed, as it has recently been by the influx, and finally by the depreciation of the price, of the imported articles; for, the quantity on hand being equal to the consumption of two or three years, of course the great mass of goods fell below cost—often to half and one third. All our citizens were at once converted into disciples of Adam Smith. They purchased every species of goods "cheaper than they could be manufactured at home." Accordingly domestic manufactures were arrested in their career. The weaver, the shoemaker, the hatter, the saddler, the sugar-baker, the brewer, the rope-maker, etc., were reduced to bankruptcy. Their establishments were suspended. Their workmen were consigned to beggary. The payment for the foreign rubbish exhausted the country of nearly the whole of its specie, immense quantities of which had been introduced to pay the French armies, and likewise from the Spanish colonies. Two thirds, probably, of the specie then in the country were composed of French crowns.

He further emphasizes his recital of the lamentable condition of affairs thus (p. 45):

The ports of this country, I repeat, were open to the commerce of the whole world, with an impost so light as not even to meet the wants of the Treasury. The consequences followed which have never failed to follow such a state of things. Our markets were glutted. Prices fell. Competition on the part of our manufacturers was at an end. They were beggared and bankrupted. The merchants, whose importations had ruined them, were involved in the calamity. And the farmers, who had felicitated themselves on the grand advantage of "buying foreign merchandise cheap," sunk likewise into the vortex of general destruction.

Chief Justice Marshall, in his well-known "Life of

Washington" (Vol. V., p. 75), thus confirms the statements made by Carey and others:

On opening their ports an immense quantity of foreign merchandise was introduced into the country, and they were tempted by the sudden cheapness of imported goods, and by their own wants, to purchase beyond their capacities for payment. Into this indiscretion they were in some measure beguiled by their own sanguine calculations on the value which a free trade would bestow on the produce of their soil, and by a reliance on those evidences of the public debt which were in the hands of most of them. So extravagantly, too, did many estimate the temptation which equal liberty and vacant lands would hold out to emigrants from the Old World, as to entertain the opinion that Europe was about to empty itself into America, and that the United States would derive from that source such an increase of population as would enhance their lands to a price heretofore not even conjectured.

Daniel Webster, whose speeches and addresses show that he had made a very thorough study of our early history, found the same state of facts as that described by the earlier witnesses. In his address delivered to the citizens of Pittsburgh, July 8, 1833, he said:

From the close of the war of the Revolution, there came on a period of depression and distress, on the Atlantic coast, such as the people had hardly felt during the sharpest crisis of the war itself. Ship-owners, shipbuilders, mechanics, artisans, all were destitute of employment, and some of them destitute of bread. British ships came freely, and British ships came plentifully; while to American ships and American products there was neither protection on the one side, nor the equivalent of reciprocal free trade on the other. The cheaper labor of England supplied the inhabitants of the Atlantic shores with everything. Ready-made clothes, among the rest, from the crown of the head to the soles of the feet, were for sale in every city. All these things came free from any general system of imposts. Some of the States

attempted to establish their own partial systems, but they failed. Voluntary association was resorted to, but that failed also.

In some of the States the whole merchant class was engulfed, no less than the manufacturers and their workmen, by the augmenting flood of inpouring foreign goods, which seemed about to overwhelm every material interest of the country. Proof of this is presented by Bancroft, in the appendix to his "History of the Formation of the Constitution" (Vol. I., p. 432), where he cites the following extract from an official dispatch of Van Berckel, American minister of the United Netherlands, to his government, under date of April 27, 1785:

> The latest news from Boston which have arrived here announce that the merchants at that place are extremely dissatisfied; that a number of English factors and agents settling there have made a sort of monopoly of all the goods imported from England, whereby the trade of that town must fall entirely into English hands. The merchants have resolved to petition Congress to adopt such measures regarding the trade of the United States as shall be advantageous; that, until the necessary resolutions shall be taken by Congress, the merchants resolve solemnly to have no direct or indirect commercial relations with these factors or agents, and, for this object, neither to sell nor to rent houses or warehouses to them; further, they have resolved to address the supreme executive of each State to adopt the necessary measures to prevent the unloading of all goods on English account consigned to such factors or agents. It is certain that the English have the trade of these States almost wholly in their hands, whereby their influence must increase; and a constantly increasing scarcity of money begins to be felt, since no ship sails hence to England without large sums of money on board, especially the English packet-boats, which monthly take with them between forty and fifty thousand pounds sterling.

On page 439, in the appendix, Bancroft cites the

following intelligence from New York, under date of June 4, 1785:

> There is no trade with any but the British, who alone give the credit they want, and draw off all the bullion they can collect. They see no prospect of clothing themselves, unless they had the circuitous commerce they formerly enjoyed with Great Britain, which many think a vain expectation, now they are no part of the empire. The scarcity of money makes the produce of the country cheap, to the disappointment of the farmers and the discouragement of husbandry. Thus the two classes of merchants and farmers, that divide nearly all America, are discontented and distressed. Some great change is approaching.

Less than three years of practical free trade with foreign nations had sufficed to bring about this revulsion, and to fill the land with ruin and suffering, so that the melancholy spectacle was presented of a people, who rose in war, sinking in peace. Those days of severe trial and bitter experience teach precious lessons, worthy the attention of such of our statesmen as are disposed to trace national calamities to their proper causes, in order to guard against their return at a future period.

In the events under the Confederation which remain to be narrated we shall see the gloom thickening, the depression more widely diffused, the embarrassments more afflictive, the difficulties of the situation more complex and dangerous.

CHAPTER III.

UNDER THE CONFEDERATION—CONTINUED.

The six years after the peace of 1783 cover the only period in which the experiment of virtual free trade with other countries has been tried by the United States. It is Great Britain's boast—a false boast—that she has banished the protective principle from her tariff, and that she levies duties on imports with the sole object of procuring revenue; but her present custom-house system embodies the very soul of restriction when compared with the low, scant, feeble barriers to the entrance of foreign merchandise that were set up separately by the various American States which composed the Confederation. For the first and only time in the history of this country, a full and fair trial was given to the policy of practically unrestrained importations. So disastrous was the outcome—so overwhelming are the proofs of the failure in practice of the doctrines of the free traders—that the frightful demoralization which took place, involving all classes of the people, and even threatening the safety of political liberty, should be made conspicuous in these annals, as a solemn warning to the present and the future.

Before the close of 1786 bankruptcy, distress, and apprehension had spread throughout the various States, with domestic violence in several of them. Many pamphlets, designed to elucidate the situation and to point out the remedy, began to be published. These were mainly of two distinct sorts, those which discussed the proposed emission of paper money under State

authority, as the true plan of ameliorating the public troubles, and those which advocated the regulation of foreign trade for the development of home manufactures, as the only method which could eradicate the existing evils. One of the latter—"The Commercial Conduct of the United States of America Considered, and the True Interests thereof, attempted to be shown by a Citizen of New York" (1786), for gratuitous circulation—may be taken as a sample of its class. In his preface the author says:

> The profession of a merchant is *trade*, they consult their *own* interest; but it is the Legislature only which can check and prohibit an intemperate, impolitic, and *luxurious* commerce, and therefore, for the exertion of such power and authority, the following sheets are inscribed to the Legislatures of the respective States.

He begins by pointing out how the prisons are crowded with debtors; how the estates of many are sold by execution from under their feet, to satisfy very trifling debts; how the cries of all ranks of the people are for money; and how the result is a complication of misfortune and misery. Then he proceeds to designate the parent cause and the needed remedy, as follows:

> I would observe that it is generally laid down as a self-evident proposition that *trade* is the road to and fountain of riches. Of this very few among us ever so much as doubted, and therefore every man that has it in his power turns merchant; but whether in such their commercial pursuits they serve themselves or their country, or whether it has not a direct contrary effect, is what I also mean to consider in the following pages.
>
> We have many merchants whose trade is altogether to Europe, from whence they import every kind of its manufactures, of which I have often known above fifty thousand pounds sterling arrive in a single ship, the greatest part of which are foreign

linens and *Asiatic* manufactures; but, taking in all the ports of Great Britain, and those of foreign countries, this continent did, for several years before the war, import above three millions sterling per annum, and, since the conclusion of peace, our importation has been greater than ever, for now all Europe pours in like a flood her luxuries upon us. In this vast importation the people rejoice upon the same principle that the Portuguese do, who think that their great importation is a mark of their riches, when it is exports alone that make a country rich, and imports that impoverish it; and that all our bread and flour, beef, pork, horses, fish, lumber, fur, potash, rice, indigo, etc., are not able to keep us out of debt, I think the Legislature and every merchant must be fully convinced of, or we should not be millions in debt to Europe as we at present are; and this is the reason that we are not able to keep any money among us, for silver and gold imported for our provisions and productions cannot stay here whilst there is so great a balance in Europe against us. It, not being ours, is therefore no increase of our wealth. The only way of keeping gold and silver in these States is by consuming less of foreign commodities than what our own commodities will amount to, for then, whatever the balance is, it certainly is our own, and will stay in the States, but, our provisions and other produce not being by any means equal to our vast imports, our money must go, and this is the real and only cause of our distresses which we have and do now labor under.

* * * Foreign commodities, which by us ought to be looked on as luxuries, must certainly impoverish these States by being brought in; but that is the fault of our importation, and there the mischief ought by wholesome laws to be cured; vanity and luxury spend them, and our merchants having imported and vended them, our money must go to pay for them; but, as that alone will not do, our lands have been and are every day sold to make up the deficiency.

* * * That Britons who planted themselves here, and brought with them arts and sciences, should not be able in one of the best countries, situated in the most desirable climate under heaven, whose very forests abound with natural plenty, whose luxuriant soil refuses not to yield any fruits that its owner demands, and is actually capable of any productions that any part of the

world is known to afford, and which in great measure experience has demonstrated—for this we can venture to assert, that whatever has been introduced here from Europe, or from under the tropic, to this continent, flourish here—that such a country, then, should have recourse to Europe, and even to the most despicable corners of it, and through them to *Asia*, in order to clothe themselves, is such a conduct of its inhabitants that a stranger unacquainted with these facts would pronounce them incredible; but would he not be astonished when he was told that the United States of North America were, according to the best calculations, above five millions sterling in debt to Great Britain, not only for useful goods (which we want), but for silks, chintz, calicoe, muslin, tea, etc., from *Asia;* and even for linen from Silesia and Austria *via* London and Amsterdam; hemp, diaper, sheeting, and other linens from *Russia*, and even from Archangel, when they have under their feet a country whose natural fertility surpasses any in the world?

But they prefer ploughing the ocean, from the torrid to the frigid zone, rather than our *fields,* and to supply a whole kingdom with flaxseed, and afterward involve themselves in debt to that very people for linen—a people oppressed by their lords with extreme heavy rents, whilst the inhabitants of these States pay no rents at all. But, notwithstanding this, they choose to be in debt, and to have their lands taken from them, rather than to make their own linen.

* * * Men being brought up with the notions of an extended foreign trade, they think there is no way to fortune but that; and therefore, more particularly since our declared independence, they, in pursuit of commerce, are exploring the whole globe, even from *Greenland* north to *Falkland's Island* south, and from lake *Superior* west to *China* east; all this in pursuit of imaginary wealth, whilst they have a redundancy of real wealth in their own soil; but, by means of their search after it in Europe, they import such immense quantities of goods that they have thereby not only stripped us of every farthing of our money, but have and are daily reducing us to the greatest distress.

* * * We are poor with a profusion of natural wealth in our possession. That we are poor needs no other proof than our *prisons, bankruptcies, judgments, executions, auctions, mortgages,*

etc., and the shameless quantity of business in our courts of law. * * * Great Britain, in the reign of Edward the Sixth, sent the wool of England to Flanders, there to be manufactured, and then the cloth returned and sold to the English, whose true interest was not understood or pursued till the persecution in the Low Countries by the Duke of Alva; in consequence, thousands of manufacturers fled to England, where they were received with open arms, from which time manufactures increased, improved, and drew wealth from all other parts of the world. Let us, then, avoid the former ignorance of Great Britain, as well as her *modern mistakes*, and adopt that part of her present policy which gives protection, countenance, and encouragement to arts and sciences.

But we are not without many persons among us who assert that we can import goods from France, Holland, Hamburgh, India, etc., cheaper than we can make them; and therefore conclude that it is our interest to encourage such importation; but, in order to convince them of their dangerous mistake, I will suppose a piece of Dutch or Irish linen costs in Europe forty shillings, which must be paid for either in our money or produce; but if a piece of equal quality be our own manufacture, and although it costs more per yard, it nevertheless is so much clear gain to the State, because the flax and labor of which it is composed is our own; but, in the first case, neither one nor the other; and this being equally true in all other goods, most of which are made or prepared by women and children, it is therefore so much clear gain.

* * * To conclude, if, from what has been said, it appears that we have in our commercial pursuits been very much mistaken; and if we choose to continue to indulge ourselves in the luxuries and expensive goods of *China*, *India* and *Europe*, only because they come from far, and at dear rates, nothing but inevitable ruin will be the consequence; in order to avoid which we have no other effectual means or *remedy* for all those evils but that of reducing our imports and increasing our *exports*.

These descriptive and argumentative statements well deserve the space given to them here, because they vividly portray the feelings which colored the circum-

stances of the time; because they exhibit in a clear light the diverse opinions which agitated the popular mind; because they outline the new current into which men's thoughts were tending in search of relief; because they convey a distinct impression of the societary paralysis and of the monetary pressure which characterized those critical days, in consequence of practicing free trade principles; and because they embody the matured views of an eye-witness, watchful of events, intelligent in observation, detailed in his record, and corroborative of the outcome under allied conditions in subsequent periods. Other proofs remain, however, which will show that our hapless country was in the throes of greater sufferings than even those set forth in the above recital.

CHAPTER IV.

UNDER THE CONFEDERATION—CONTINUED.

As the central object of these early chapters is to establish, beyond cavil or dispute, the fact that free importations precipitated upon the country a multitude of evils, among which were private and public bankruptcy, followed by internal disorder, confusion, and accumulating dangers, it is worth while to multiply the proofs, and to exhibit them in every point of view, in order that the present may be enabled to look back intelligently from the vantage summit which experience has toilsomely reached, and, with true historical insight, study profitably the lessons taught by the vicissitudes of that distant past.

From lack of proper stimulus to home production, the chief opportunity for the employment of capital was in trade, which constantly tended to degenerate in its methods; hence, the period immediately succeeding the Revolutionary war was, in a peculiar sense, an age of speculation. Trafficking in soldiers' certificates, in the public lands, and in the various evidences of the public debt, was the business of many who had money, and of many who had not. When the specie, brought in by the British and the French armies, and by the foreign loans to the United States, had largely flowed out to pay for excessive importations of European and Asiatic merchandise, a monetary stringency took place which amounted almost to a deprivation of a circulating medium. At length it became impossible to settle

contracts with anything satisfactory to the creditor. Depreciation seized upon every species of property. Legal pressure to enforce the payment of debts caused alarming sacrifices of both personal and real estate; spread distress wide and far among the masses of the people; aroused in the hearts of the sufferers the bitterest feelings against lawyers, the courts, and the whole creditor class; led to a popular clamor for stay laws, installment plans, property-tender acts, and various other radical measures of supposed relief; and finally filled the whole land with excitement, apprehension, a sense of weakness, and a tendency to despair of the republic. Inability to pay even necessary taxes became general, and often these could be collected only by levy and sale of homesteads. All these evils came in direct course from the excessive importations, which absorbed and carried out of the several States nearly all the coin, without which society seemed about to fall to pieces.

Let historical witnesses, most of them eye-witnesses, be called to substantiate these averments. The following extracts are taken from the third volume of Hildreth's "History of the United States":

One large portion of the wealthy men of colonial times had been expatriated, and another part had been impoverished by the Revolution. In their places a new moneyed class had sprung up, especially in the Eastern States, men who had grown rich in the course of the war as sutlers, by privateering, by speculations in the fluctuating paper money, and by other operations not always of the most honorable kind. Large claims against their less fortunate neighbors had accumulated in the hands of these men, many of whom were disposed to press their legal claims to the utmost. The sudden fortunes made by the war had introduced a spirit of luxury into the maritime towns, and even the taste and

manners of the rural inhabitants had been tainted by the effects of military service, in which so large a part of the male population had been more or less engaged. The fisheries, formerly a chief resource of New England, broken up by the war, had not yet been re-established. The farmers no longer found that market for their produce which the French, American, and British armies had furnished. *The large importation of foreign goods, subject to little or no duty, and sold at peace prices, was proving ruinous to all those domestic manufactures and mechanical employments which the non-consumption agreements and the war had created and fostered. Immediately after the peace, the country had been flooded with imported goods, and debts had been unwarily contracted for which there was no means to pay. The imports from Great Britain in the years 1784 and 1785 had amounted in value to thirty millions of dollars, while the exports thither had not exceeded nine millions.* The lawyers, whose fees were thought enormous, and who were fast growing rich, from the multiplicity of suits with which all the courts abounded, were regarded with no very favorable eyes by the mass of the citizens, impoverished by the same causes to which they owed their wealth. There was an abundance of discontented persons more or less connected with the late army, deprived by the peace of their accustomed means of support, *and without opportunity to engage in productive industry.* The community, from these various causes, was fast becoming divided into two embittered factions of creditors and debtors. The certificates of the public debt, parted with at a great discount by the officers and others to whom they had been given, were fast accumulating in the hands of a few speculators able to wait for better times. With the example of the old tenor paper before their eyes, an opinion gained ground among the people, oppressed by taxes to meet the interest on these debts, that the holders of certificates by purchase were only entitled to receive what they had paid—an opinion which tended to still further depreciation. Others of the debtor party had more extensive views. Stop and tender laws were called for, and in some States were passed. New issues of paper money were demanded, which, by their depreciation, might sweep off the whole mass of debt, public and private. Such issues were made in New York and Rhode Island, in which latter State John Collins had just been elected Governor. The Rhode Island paper

soon depreciated to eight for one. Laws were enacted to enforce its circulation; but, though similar to those formerly recommended by Congress to support the credit of the Continental money, they were now generally denounced as oppressive and unjust, and obtained for Rhode Island an unenviable notoriety.

Even those States which issued no paper money were far from enjoying a sound currency. *The excessive importation of foreign goods had drained the country of specie.* The circulating medium consisted principally of treasury orders on the State tax collectors, and depreciated certificates of State and federal debt. Even among those in favor of meeting the public liabilities by taxation, there was a lack of agreement as to the way in which taxes should be raised. *The excessive importation of foreign goods, and the consequent pressure upon domestic manufactures, had diminished a good deal of the old prejudice against customs duties. A party had sprung up in favor of raising a large part of the public revenue in that way, thus reviving the old colonial schemes for the protection of domestic industry by duties upon foreign goods. This, however, was opposed by the merchants as injurious to their interests. They came forward as the champions of free trade, and insisted upon the old system of direct taxation.* A large part of the people seemed quite disinclined to submit to either method.

The weakness, for some years so evident in Congress, had begun to extend to the States. Not only was the idea in circulation of separating into two or three confederacies, but some of the principal States seemed themselves in danger of splitting into fragments.—pp. 465, 466, 467 and 468.

Discussing the insurrections in Massachusetts in 1786, the same author says:

The real difficulty was the poverty and exhaustion of the country consequent upon the war; *the want of a certain and remunerative market for the produce of the farmer; and the depression of domestic manufactures by competition from abroad.*—p. 472.

It is plain from these statements that the primary cause, back of all the troubles, was the free trade system

then in practice. There was a sufficient metallic currency in the country at the close of the war. Had Congress been empowered to lay duties on imports, and had a thoroughly protective tariff been enacted, no flood of foreign goods could have poured in to demand an exhaustive export of specie. Manufacturing industries would have sprung up; the farmer would have obtained a steady market at home for his surplus, then denied to him abroad; capital would have sought the profits of a stable business rather than the uncertainties of pure speculation; the national government would have derived an ample revenue for its current expenditures, and for the payment of interest on the public obligations, if not more than that; taxpayers would have experienced no distress in satisfying the demands of the several States; production in its various branches would have expanded and flourished with the local increase of wealth, skill, and enterprise; and prosperity with contentment would have spread over the land, instead of the sufferings actually endured. Nothing is more remarkable than the rapidity with which a country usually recuperates after the close of a long war, and sometimes rises visibly above its condition previous to hostilities, if only the population is not greatly reduced in number and in effective producing power. This fact is elaborately pointed out by John Stuart Mill, in the fifth chapter of his work on "The Principles of Political Economy." What prevented the rapid recuperation of the United States, after the peace of 1783, was the system of free foreign trade, allowed to add its devastations upon industry to those of the Revolution.

Minot says, in his "History of the Insurrections in Massachusetts," beginning on page 11:

The usual consequences of war were conspicuous upon the habits of the people of Massachusetts. Those of the maritime towns relapsed into the voluptuousness which arises from the precarious wealth of naval adventurers. An emulation prevailed among men of fortune to exceed each other in the full display of their riches. This was imitated among the less opulent classes of citizens, and drew them off from those principles of diligence and economy which constitute the best support of all governments, and particularly of the republican. Besides which, what was most to be lamented, the discipline and manners of the army had vitiated the taste and relaxed the industry of the yeoman. In this disposition of the people to indulge the use of luxuries, *the merchants saw a market for foreign manufactures.* The political character of America, standing in a respectable view abroad, gave a confidence and credit to individual citizens heretofore unknown. This credit was improved, *and goods were imported to a much greater amount than could be consumed, or paid for.* The evils of this excess of importation were greatly aggravated by the decayed condition of the commerce, and the little attention which had been paid, during the war, to raising of articles for exports. The fisheries, which may be called the mines of Massachusetts, had been neglected, or but feebly improved, from the want of shipping and other causes. The whale fishery, which, from trifling beginnings in the year 1701, at length brought into the late Provinces no less a sum than 167,000 pounds sterling, annually, through the island of Nantucket alone, and which employed 150 sail of vessels, with near 2,500 seamen, was, at the opening of the peace, reduced to be the object of nineteen sail only. A great, if not a proportionable diminution, was visible in other articles of exportation. In addition to this, what few could be obtained were rendered almost useless by one of the severest effects of the Revolution—the loss of many markets to which Americans had formerly resorted with their produce. *Thus was the usual means of remittance by articles of the growth of the country almost annihilated, and little else than specie remained to answer the demands incurred by importations. The money, of course, was drawn off; and this being inadequate to the purpose of discharging the whole amount of foreign contracts, the residue was chiefly sunk by the bankruptcies of the importers. The scarcity of specie, arising principally from*

this cause, was attended with evident consequences; it checked commercial intercourse throughout the community, and furnished reluctant debtors with an apology for withholding their dues both from individuals and the public.

Here again it is apparent that the parent source of the deteriorated condition of affairs was the enormous influx of foreign goods, with its necessary sequence, the exhaustive draining away of specie. Under the protective system, the large capital embodied in metallic money would have remained at home sufficiently to have established domestic manufactures on a firm footing; to have supplied earnings and purchasing power to the people kept idle by the free trade policy; to have created a profitable market for the farmer's produce; to have facilitated all the transactions of business; and to have served as a solid basis for a paper currency, had that become needful. The wild mania for speculation, which characterized those early days, was the natural offspring of the precarious nature of what, under different circumstances, would have been remunerative investments in reproductive industry. Capital assumes risks only when security is unattainable, as it then was. This evil would have vanished had appropriate laws been passed to secure to the people the full advantages and benefits of their home market. As this history advances, it will be seen that a craze for rashly adventurous speculation was a salient feature of every period cursed with free trade principles, and that its extent was greatest when the amount of protection was least. When the avenues to solid business enterprise are obstructed or closed, the restless activity of the human mind seeks a vent in all other directions; for it will sink down into stagnation only through compulsion. So soon as the

government provides it with the bulwarks of safety, it turns with zeal, vigor, and persistence to legitimate undertakings.

CHAPTER V.

UNDER THE CONFEDERATION — CONTINUED.

In every quarter of the Confederation the same scenes of distress and demoralization were to be witnessed. A common cause of disaster had produced a common affliction. The newspapers in all the States teemed with discussions of proposed remedies for the destructive consequences which had fallen upon the character of the country, and upon the prosperity and happiness of its citizens. One writer in the *New Hampshire Gazette*, July 20, 1786, bitterly complained of "the bondage of the people of New Hampshire; 'for, in the midst of life, they are in death,' death of the worst kind, penury and want of the common blessings of Providence. How long, freemen of New Hampshire, can ye bear the yoke of oppression!" Belknap, in the second volume of his "History of New Hampshire," swells the general emphasis of the testimony. Beginning on page 352, he thus details the process by which the people had been brought into such depths of universal embarrassment, distress, and wretchedness.

A large debt, accumulated by the war, remained to be discharged. For this purpose, requisitions were made by Congress, as well as by the State government. *Silver and gold, which had circulated largely in the latter years of the war, were returning, by the usual course of trade, to those countries whence large quantities of necessary and unnecessary commodities had been imported.* HAD ANY GENERAL SYSTEM OF IMPOST BEEN ADOPTED, SOME PART OF THIS MONEY MIGHT HAVE BEEN RETAINED, AND SOME PART OF THE PUBLIC DEBT DISCHARGED; *but the power of Congress did not extend to this object; and the States were not united in the expediency*

of delegating new and sufficient powers to that body. The partial imposts, laid by some of the States, were ineffectual as long as others found their interest in omitting them. Recourse, therefore, was had to the usual mode of taxation on polls and estates, by which means a heavy burden was laid on the husbandman and the laborer. Those who were punctual in their payments saw no probable end of their exertions, whilst the negligence of others occasioned repeated demands. Private creditors, who had suffered by long forbearance, were importunate for their dues, and the courts of law were full of suits.

The people who felt themselves distressed held conferences with a view to devise means of redress. The remedy which appeared to many of them most easy was a new emission of paper bills, funded on real estate, and loaned on interest. To effect this, petitions were addressed to the Legislature; and, to remedy the grievance, as far as it was occasioned by a debt of the State, an act was passed to draw into the Treasury all notes issued by the State, and give certificates for the interest, and for fifteen per cent of the principal, annually; which certificates were to be received by the Treasurer for taxes, "in lieu of and equal to silver and gold." By this means it was expected that the debt would gradually be extinguished, and that the people would easily be enabled to pay at least one species of their taxes.

Beginning on page 355, Belknap particularizes some of the extreme measures which popular clamor and the severity of the emergency compelled several of the Legislatures to adopt, in an attempt to alleviate the intolerable situation of the community. He says:

Similar difficulties, at the same time, existed in the neighboring State of Massachusetts, to remedy which, among other palliatives, a law was passed called a *tender act*, "by which it was provided that *executions issued for private demands might be satisfied by cattle and other enumerated articles, at an appraisement of impartial men under oath.*" For such a law the discontented party in New Hampshire petitioned; and to gratify them, the Legislature enacted, that "*when any debtor shall tender to his creditor, in*

satisfaction of an execution for debt, either real or personal estate sufficient, the body of the debtor shall be exempt from imprisonment, and the debt shall carry an interest of six per cent, the creditor being at liberty either to receive the estate, so tendered, at a value estimated by three appraisers, or to keep alive the demand by taking out an alias, within one year after the return of any former execution, and levying it on any estate of the debtor which he can find." At the same time an act was made, enlarging the power of Justices of the Peace to try and determine actions of debt and trespass to the value of ten pounds. These laws were complained of as unconstitutional; the former as being retrospective, and changing the nature of contracts; the latter as depriving the creditor, in certain cases, of a right to trial by jury. But so strong was the clamor for redress of grievances, and so influential was the example of the neighboring State, that some of the best men in the Legislature found it necessary to comply, whilst another part were secretly in favor of worse measures.

These large concessions to the debtor class did not bring the expected relief, because they did not touch the real cause of the universal distress. Matters went from bad to worse in New Hampshire, as they did in all other parts of the Confederation. Then additional efforts were made to stem the rising current of disaster. Several of these are outlined by Belknap on page 357, as follows:

The scarcity of money was still a grievance which the laws had not remedied, but rather had a tendency to increase. To encourage its importation into the country, the Legislature exempted from all port duties, except light-money, every vessel which should bring gold and silver only; and from one half of the duties, if a sum of money equal to one half of the cargo should be imported. But it was to no purpose to import money, unless encouragement were given for its circulation, which could not be expected whilst the tender act was in force; for every man who owned money thought it more secure in his own hands than in the hands of others.

The clamor for paper money increased, and, like a raging fever, approached toward a crisis. In every town there was a party in favor of it, and the public papers were continually filled with declamations on the subject. It was said that an emission of bills of credit would give a spring to commerce, and encourage agriculture; that the poor would be able to pay their debts and taxes; that all the arguments against issuing paper were framed by speculators, and were intended to serve the wealthy part of the community who had monopolized the public securities, that they might raise their value and get all the good bargains into their own hands; that other States in the Union had issued paper bills, and were rejoicing in the happy effects of their currency *without any depreciation;* that the people had a right to call upon their Representatives to stamp a value on paper, or leather, or any other substance capable of receiving an impression; and that, to prevent its depreciation, a law should be enacted to punish with banishment and outlawry every person who should attempt by any means to lessen its value.

While these scenes of bankruptcy, ruin and demoralization were taking place in the northern end of the Confederation, similar ones were occurring in the southern end. Ramsay, in the second volume of his "History of South Carolina," beginning on page 428, thus details the situation in that State:

The little of gold and silver that was in circulation soon found its way to Great Britain. The people of Carolina had been but a short time in the possession of peace and independence, when they were brought under a new species of dependence. *So universally were they in debt beyond their ability to pay, that a rigid enforcement of the laws would have deprived them of their possessions and their personal liberty,* and still left them under incumbrances; for *property when brought to sale under execution, sold at so low a price as frequently ruined the debtor without paying the creditor. A disposition to resist the laws became common.* Assemblies were called oftener and earlier than the Constitution and laws required. The good and evil of representative government became apparent. The Assemblies were a correct representation of the people. They had common feel-

ings, and their situations were in most cases similar. These led to measures which procured temporary relief, but at the expense of the permanent and extended interests of the community. *Laws were passed in which property of every kind was made a legal tender in the payment of debts, though payable according to contract in gold or silver. Other laws installed the debt, so that, of sums already due, only a third, and afterward only a fifth, was annually recoverable in the courts of law.* Numbers were clamorous for large emissions of paper money armed with the sanction of legal tender. This old resource in cases of extremity had been so overdone in the Revolutionary war, that many doubted the possibility of attaching credit to anything in the form of bills of credit. After some time, an emission of £100,000 sterling, secured by a mortgage of land, or a deposit of plate, was risked. The smallness of the sum, and the ample security of the fund on which it was emitted, together with the great want of some circulating medium, and an agreement of the merchants to receive it in payment at its nominal value, gave it credit and circulation.

The effects of these laws, interfering between debtors and creditors, were extensive. They destroyed public credit and confidence between man and man; injured the morals of the people; and, in many instances, insured and aggravated the final ruin of the debtors for whose temporary relief they were brought forward. The procrastination of payment abated exertions to meet it with promptitude. In the meantime, interest was accumulating, and the expenses of suits multiplied by the number of installments. At no time, before nor since, were the fortunes of attorneys so rapidly or so easily made. At no period has an equal number of planters been involved in embarrassments from which they were never extricated, or only extricated by more than ordinary sacrifices.

The eight years of war in Carolina were followed by eight years of disorganization, which produced such an amount of civil distress as diminished with some their respect for liberty and independence. Several apprehended that the same scenes which had taken place in England in the seventeenth century, after a long and bloody civil war, would be acted over in America by a fickle people, who had neither the fortitude nor the wisdom to govern themselves.

Equally disintegrating influences were at work in Connecticut. Under date of Sept. 20, 1786, Otto, the French Minister in New York, wrote home to his government, as follows:

In the small State of Connecticut alone *more than five hundred farms have been offered for sale to pay the arrears of taxes. As these sales take place only for cash, they are made at very low price, and the proprietors often receive not more than one tenth of the value.* The people feel the deadly consequences of this oppression, but, not being able to discover its true cause, it turns upon the judges and the lawyers. In the States which have paper money, the rigor of the laws is less desolating for the farmer, since he can always get paper enough to satisfy his engagements; and, besides, the creditors are less urgent.

Affairs in Pennsylvania were no better. Beginning on page 35 of "The New Olive Branch," Mathew Carey says:

I have in 1786 seen sixteen houses to let in two squares of about eight hundred feet in one of the best sites for business in Philadelphia. Real property could hardly find a market. The number of persons reduced to distress, and forced to sell their merchandise, was so great, and those who had money to invest were so very few, that the sacrifices were immense. Debtors were ruined without paying a fourth of the demands of their creditors. There were most unprecedented transfers of property. Men worth large estates, who had unfortunately entered into business, were in a year or two totally ruined; and those who had a command of ready money quadrupled or quintupled their estates in an equally short space. Confidence was so wholly destroyed that interest rose to two, two and a half, and three per cent per month. And bonds and judgments and mortgages were sold at a discount of twenty, thirty, forty, and fifty per cent. In a word, few countries have experienced a more awful state of distress and wretchedness.

Chief-Justice Marshall, taking a general survey of the situation throughout the Confederation, says, in the

fifth volume of his "Life of Washington," beginning on page 88:

In many of those States which had repelled every attempt to introduce into circulation a depreciated medium of commerce, or to defeat the annual provision of funds for the payment of the interest, the debt sunk in value to such a degree that those creditors who were induced by their necessities, or want of confidence in their rulers, to transfer their public securities, were compelled to submit to a loss of from ten to sixteen or seventeen shillings in the pound. However unexceptionable might be the conduct of the existing Legislature, the hazard from those which were to follow was too great to be encountered without an immense premium. In private transactions, an astonishing degree of distrust also prevailed. *The bonds of men whose competency to pay their debts was unquestionable, could not be negotiated but at a discount of thirty, forty, and fifty per centum: real property was scarcely vendible; and sales of any article for ready money could be made only at a ruinous loss. The prospect of extricating the country from these embarrassments was by no means flattering.* Whilst everything else fluctuated, some of the causes which produced this calamitous state of things were permanent. The hope and fear still remained that the debtor party would obtain the victory at the elections; and, instead of making the painful effort to obtain relief by industry and economy, many rested all their hopes on legislative interference. *The mass of national labor, and of national wealth, was consequently diminished.* In every quarter were found those who asserted it to be impossible for the people to pay their public or private debts; and, in some instances, threats were uttered of suspending the administration of justice by private violence.

The testimony so far presented establishes conclusively the following points: 1. That only very low duties on imports (scarcely to be dignified by the name of restriction) were levied by any State, and that these duties were rendered nugatory by the counteracting laws and practices of other States. 2. That, in consequence, the system of free trade with foreign nations

existed with hardly any impediment whatever. 3. That the country was inundated with the influx of European and Asiatic merchandise. 4. That manufacturing establishments in the Confederation were crippled, prostrated, or utterly ruined by the overmastering competition from abroad. 5. That an exhaustive drain of specie for export speedily followed, until the American people, from New Hampshire to Georgia, were left almost completely without a circulating medium. 6. That property, real and personal, depreciated to a frightful degree. 7. That, in absence of ability to engage in legitimate enterprises, a craze for speculation seized upon the community, mainly taking the form of traffic in public and private securities. 8. That bankruptcy became general, the courts were crowded with suits, the prisons overflowed with debtors, the lawyers fast acquired wealth by the multiplicity of fees, and the farms, houses, and personal property of the unfortunates were sacrificed to clear off trifling obligations. 9. That even necessary taxes often could not be collected without levy and sale. 10. That relief was sought in stay laws, installment of debts, property-tender acts, suspension of the operation of the courts, emission of paper money, and various like expedients. 11. That all the supposed palliatives served only to intensify the universal distress. 12. That the movement of events was steadily from bad to worse, until perplexity and foreboding became the predominant feelings of the time. 13. That the parent cause of this brood of evils was the free-trade system, which led, by a succession of cumulative consequences, to greater and still greater calamities.

CHAPTER VI.

UNDER THE CONFEDERATION—CONTINUED.

At length a crisis arrived which no temporizing measures could avert or postpone. The involvement, perplexity, and actual distress of a very considerable part of the people had been steadily accumulating until the galling load of troubles could be scarcely endured. Every expedient had failed to bring relief. Debtors were daily becoming less able to meet their contracts. Numerous families, although industrious and careful, had lost under execution the great bulk of their property, and were sorely pressed to find the means of a respectable living. Multitudes of others were threatened with the same harsh misfortune. Confidence between man and man was at an alarmingly low ebb. Gloom, despondency, adversity, and apprehension were chronic afflictions in tens of thousands of households. No prospect of better times cheered those who sought to penetrate the veil of the future. To many minds, wrought upon by a sense of being wronged by the laws and the courts, government itself appeared transformed into a grievance, since the very taxes essential to keep the machinery of authority in motion could be collected, in frequent instances, only by proceeding to a legal extremity which sacrificed the estate of the citizen, and which was felt as an oppression.

Soon the growing desperation found vent in outbursts of tumultuous resentment. In New Hampshire, an armed force marched to Exeter, surrounded the meeting-house where the Houses of Assembly were hold-

ing a conference, placed sentries at the doors, held the members prisoners, and threatened death to any person who should attempt to escape before the demands made upon the Legislature had been granted. This violence continued until the malcontents were dispersed by companies of militia summoned from a distance. With like intent, mobs made a tumult in Connecticut, but they were overawed by the prompt action of the Governor, and restrained from any overt act. In Massachusetts, however, where a third of the inhabitants were thought to be disaffected toward the government, actual insurrections took place, followed by what is known as Shay's rebellion, which was not fully subdued until the spring of 1787, after some bloodshed and large expense. Indeed, the spirit of insubordination and a tendency to disintegration was spreading rapidly throughout the Confederation. Three western counties of North Carolina declared their independence, and set up a State named Franklin or Frankland. There was a movement in the county of Washington to secede from Virginia for the purpose of becoming part of this new State. The Connecticut settlers at Wyoming, greatly dissatisfied by the refusal of Pennsylvania to confirm their titles, rose in insurrection against the Pennsylvania authorities, and openly aimed at forming a State of their own. A convention of the people of Maine was held at Portland to consider the expediency of erecting that division of the country into an independent commonwealth. Thus lawlessness, generated by universal suffering and discontent, seemed about to destroy the peace, liberty, and safety gained by the patriotic exertions and heavy sacrifices of many years.

Otto, the French Minister at New York, writing

home to his government, under date of September 20, 1786, gives the following description of the disorganizing tendencies in New England:

The want of energy in the separate government of the States had till now occasioned few commotions to the repose and to the security of the citizens, and it was hoped that Congress would insensibly take the stability that was supposed to be observable in the interior organization of the States; but the licentiousness of a greedy populace has just shaken the basis of the government which had hitherto been regarded as the most solid and the most perfect of the whole Confederation, and it is seen too late that the American constitutions, so generally admired, are far from being exempt from defects.

The common people of Massachusetts, indignant at not having obtained the emission of paper money, ran together in certain districts, with arms in hand, to suspend the courts of justice and to prevent the recovery of debts. Governor Bowdoin having neglected instantly to assemble the militia, the insurgents went so far as to disperse the judges and the advocates. They demanded with loud cries the abolition of courts of justice, the holding of the sessions of the legislative assembly in any other town but Boston, the reduction of salaries granted to public officers, a new emission of paper money, the liberation of those imprisoned for debt, the settlement of the accounts of the United States, the prohibition of every object of luxury imported from abroad, the diminution of taxes, the absolute liberty of the press, and the abolition of the Senate or upper chamber.

* * * The courts of justice are at present protected by troops and by several companies of artillery. Congress being informed that the seditious had drawn near to Springfield, and that the arsenals of the United States were in danger, General Knox, Minister of War, received orders to go there immediately, and to order a respectable corps of militia to march there. The proclamation of the Governor of Massachusetts; the circular letters of the town of Boston, and other principal towns; the proceedings of the different municipal assemblies; and the measures taken by the seditious to disperse the courts of justice, are to be

found in the gazettes that I have the honor to send you. To these details I will only add the reflections of the most enlightened patriots on this factious event. They perceive that, in forming the different constitutions, they had too great need of the assistance of the common people not to grant to them much more than the repose of the republic, the security of the citizen, and the energy of the government can sustain; that an entire and unlimited liberty is a phantom which has never been able to exist but at the expense of public tranquility; that the theory of the three powers equally distributed is sublime, but that practice offers a thousand difficulties which ought to have been foreseen; that the executive power is much too weak in America; that the simplicity of the chiefs renders them contemptible in the eyes of the multitude, which judges only by the senses; and that there is need of strokes of authority, of arms, and of lictors, to make the government respected. These principles are confirmed by a scene like that in Massachusetts which took place in New Hampshire. About three hundred mutineers met near Exeter to break up the courts of justice; but Governor Sullivan, a distinguished officer during the war, instantly put himself at the head of the militia, dispersed the insurgents, and dispersed the chiefs of the revolt. The people of Connecticut have equally made some efforts for the abolishment of debts and breaking up of the courts of justice, but the vigilance of the Governor has thus far prevented any overt act. *It must be agreed that these insurrections are in a great part due to the scarcity of specie.*

The last sentence in the above extract is equivalent to saying that the insurrections were largely attributable to the free-trade system, under which specie flowed out as foreign merchandise flowed in; for events, in one relation of their existence, are effects; in some further relation, these effects become causes of other effects. Thus the motions of the planets are the effects of ascertained causes, and these complex motions are, in their turn, the causes of eclipses, and of other phenomena, such as daylight and darkness, these effects being also, in

their turn, causes of new classes of effects. It is necessary to go to the sun to find the source of the light of the moon; and it is necessary to go to the free-trade system to find the source of the scarcity of specie which, in *its* turn, was the source of the distress, and of the discontent and the demoralization which incited large numbers of the people to insurrection.

Mr. Temple, the British Consul-General at New York, wrote to Lord Carmarthen, in London, under date of Oct. 4, 1786, as follows:

Mobs, tumults, and bodies of men in arms are now on tiptoe in various parts of this country, all tending to the dissolution of not only what is called the supreme power (Congress), but to bring into contempt and disregard the Legislatures and governments of the several States. At this hour, while I am writing, I have undoubted intelligence that at Springfield (a county town in the State of Massachusetts) more than fifteen hundred men in arms are there assembled to stop the proceedings of the courts of justice until the constitution of government be altered and reformed to their approbation! and that about one thousand militia (horse and foot), by order of the Governor, are there also assembled to support government against the said insurgents! In the meantime, the Governor of that State hath, by special proclamation, called the Legislature to meet as upon last Thursday; and upon the proceedings and doings of that Legislature it seems to depend whether or not arms shall decide the matter between the contending parties! Public affairs are much the same in the State of New Hampshire. The whole legislative body of that State were, for four hours, prisoners in the hands of a tumultuous assembly in arms! Indeed, dissatisfaction and uneasiness prevail more or less throughout this country; the greater part of the people poor, and many in desperate circumstances, do not, it seems, want any government at all, but had rather have all power and property reduced to a level, and it is more than probable that general confusion will take place before any permanent government be established in this unhappy country.

Minot, in his "History of the Insurrections in Massachusetts," page 27, summing up the causes of public disorder, proceeds as follows:

From the short view which we have taken of the affairs of the Commonwealth, sufficient causes appear to account for the commotions which ensued. A heavy debt lying on the State, added to burdens of the same nature upon almost every incorporation within it; a decline, or rather an extinction, of public credit; a relaxation of manners, and a free use of foreign luxuries; a decay of trade and manufactures, with a prevailing scarcity of money; and, above all, individuals involved in debt to each other, are evils which leave us under no necessity of searching further for the reasons of the insurrections which took place.

Chief-Justice Marshall says, in the fifth volume of his "Life of Washington," page 112:

This disorderly resentment was cherished by unlicensed conventions, which, after voting their own constitutionality, and assuming the name of the people, arrayed themselves against the Legislature, and detailed at great length the grievances by which they alleged themselves to be oppressed. Its hostility was principally directed against the compensation promised to the officers of the army, against taxes, and against the administration of justice; and the circulation of a depreciated currency was required, as a relief from the pressure of public and private burdens which had become, it was alleged, too heavy to be borne. Against lawyers and courts the strongest resentment was manifested; and to such a dangerous extent were these dispositions indulged, that, in many instances, tumultuous assemblages of the people arrested the course of law, and restrained the judges from proceeding in the execution of their duty. The ordinary recourse to the power of the country was found an insufficient security, and the appeals made to reason were attended with no beneficial effect. The forbearance of the government was attributed to timidity rather than to moderation, and the spirit of insurrection appeared to be organized with a regular system for the suppression of the courts.

Testimony to the same general effect is obtainable

from all the sources of information which have been preserved. Everywhere throughout the Confederation were to be seen centrifugal tendencies in powerful operation, threatening in the end to disrupt the Union, and even to split some of the States into fragments, with the result of antagonistic governments, mutual antipathies, discordant relations, and dangerous disputes among petty, weak, jealous States, whereas a community of reciprocities and a recognized interdependence were essential to secure efficacy and permanence to the objects of the Revolution. The correspondence between the public men of that day abounds with expressions of foreboding, alarm, and almost of despair. Henry Lee, Jr., wrote to Washington, October 17, 1786:

> General Knox has just returned, and his report, grounded on his own knowledge, is replete with melancholy information. A majority of the people of Massachusetts are in opposition to the government. Some of the leaders avow the subversion of it to be their object, together with the abolition of debts, the division of property, and a reunion with Great Britain. In all the Eastern States the same temper prevails more or less, and will certainly break forth whenever the opportune moment may arrive. The malcontents are in close connection with Vermont, and that district, it is believed, is in negotiation with the government of Canada. In a word, my dear General, we are all in dire apprehension that a beginning of anarchy, with all its calamities, is made, and we have no means to stop the dreadful work.

William Grayson wrote to Monroe, November 22, 1786:

> The disturbances in Massachusetts bay have been considerable, and absolutely threaten the most serious consequences. It is supposed the insurgents are encouraged by emissaries of a certain nation, and that Vermont is in the association. How it will end, God only knows; the present prospects are, no doubt, extremely alarming.

David Ramsey wrote to Jefferson, April 7, 1787:

Our governments in the Southern States are much more quiet than in the Northern, but much of our quiet arises from the temporizing of the Legislature in refusing legal protection to the prosecution of the just rights of the creditors. Our eyes now are all fixed on the Continental Convention to be held in Philadelphia in May next. Unless they make an efficient federal government, I fear that the end of the matter will be an American monarchy, or rather, three or more confederacies.

Washington, in numerous letters to his friends, showed how keenly he felt solicitude and apprehension, as may be seen in the following extracts:

To Thomas Johnson, November 12, 1786:

The want of energy in the federal government; the pulling of one State and parts of States against another; and the commotions among the eastern people, have sunk our national character much below par, and have brought our politics and credit to the brink of a precipice. Liberality, justice, and unanimity in those States which do not appear to have drunk so deep of the cup of folly may yet retrieve our affairs, but no time is to be lost in essaying the reparation of them.

To David Stuart, November 19, 1786:

However delicate the revising of the federal system may appear, it is a work of indispensable necessity. The present constitution is inadequate; the superstructure is tottering to its foundation, and without helps will bury us in its ruins.

To Edmund Randolph, November 19, 1786:

Our affairs seem to be drawing to an awful crisis; it is necessary, therefore, that the abilities of every man should be drawn into action in a public line, to rescue them, if possible, from impending ruin.

To John Jay:

What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror. From thinking proceeds speaking, and thence to acting is often but a single step.

To Colonel Humphries:

For God's sake tell me what is the cause of all these com motions? Do they proceed from licentiousness, British influence disseminated by the Tories, or real grievances which admit of redress? If the latter, why was redress delayed until the public mind had become so much agitated? If the former, why are not the powers of government tried at once? It is as well to be without, as not to exercise them. Commotions of this sort, like snow-balls, gather strength as they roll, if there is no opposition in the way to divide and crumble them.

To Colonel Humphries:

It is but the other day that we were shedding our blood to obtain the constitutions under which we now live—constitutions of our own choice and making—and now we are unsheathing the sword to overturn them.

Such were throughout the Confederation, and such always have been in other countries, the results of free-trade principles in the culminating stages of their operation. Step by step the movement of the country was constantly retrograde, proceeding through ruinously excessive importations to a pinching shrinkage of home industry and of employment for domestic labor; then to an exhaustive draining away of specie, until the people were almost entirely without a circulating medium; then to sore and exasperating distress for lack of money, and to unendurable pressure in the relation of debtor and creditor, with widely extending impoverishment; then to resentful discontent, weakened respect for the law and its tribunals, decay of allegiance, loss of confidence between man and man, and an unloosening of societary ties; then to turbulence, open antagonism to the constituted authorities, insurrectionary commotions, and an appeal to arms

in search of unattained redress. Had there been no free trade, there would have been no inundation of foreign goods; had there been no inundation of foreign goods, there would have been no drain of specie; had there been no drain of specie, there would have been no distress from lack of a circulating medium; had there been no such distress, there would have been no impulse toward insubordination to the State. As the first drink leads on to a settled habit of tippling, and thence, unless arrested by reform, to penury, disease, and a drunkard's grave, so free trade led on, by a succession of downward stages, to the finality of open revolt. The starting-point was free trade; the outcome was rebellion, and an imperious necessity to resort for deliverance to the protective system. Had no radical corrective been speedily applied, the centrifugal tendencies must soon have become so much stronger than the centripetal or unifying ones, that the Confederation would have been shattered into fragments—into a number of distinct, discordant, petty, weak, poverty-stricken States, and there would have been a most inglorious end to the once promising experiment of political liberty. As there was the closest approach to absolute free trade ever tried by this country, so there was the largest harvest of calamities and dangers ever experienced by the American people. That awful crisis, at the outset of our career as an independent nation, should be regarded as a monument erected by the sufferings of our forefathers to warn posterity against the delusive and mischievous plausibilities of the free-trade policy. Had the lesson taught by the almost fatal experience of those early years been duly appreciated, instead of being forgotten or ignored, the United States would have been kept out

of the vortex of bankruptcies, distresses and miseries into which unprotective tariffs plunged the people, as will be seen, at various subsequent periods. Nor is it now less needful to ponder those solemn teachings of our history, when Peter-the-Hermit doctrinaires, emerging from their retirement amid theoretic book lore, are organizing a crusade to recover the desolate and accursed Jerusalem of unrestricted commerce. The sorrows drank by our revolutionary sires to the very dregs, under that system, should be to all following generations what the red signal-light is to a place of peril.

CHAPTER VII.

WHY "A MORE PERFECT UNION" WAS FORMED.

During the Revolutionary war, the armies suffered scarcely endurable hardships on account of the lack of power in Congress to enforce its requisitions upon the States for needed supplies. At the close of the struggle, the disbanding soldiers, with an acute recollection of the dangerous consequences of inadequate authority in the national government, had a favorite toast—"*a hoop for the barrel.*" As the years rolled away, the wisdom of this sentiment was made manifest in an illumination of universal distress, amid which "the barrel," for want of "a hoop," seemed about to fall to pieces, and become scattered staves. At length the people, educated by their dreadful experiences to a clear knowledge of what was essential to preserve the Confederation from a fatal catastrophe, called the Federal Convention of 1787, for the express purpose of obtaining "a hoop for the barrel."

Bancroft, in his "History of the Formation of the Constitution" (Vol. I, page 146), enumerates the agencies which exerted the most powerful tendency toward the establishment of a new organization of government fully endowed with the powers essential to a vigorous nationality. He says:

> Of many causes promoting union, four above others exercised a steady and commanding influence. The new republic as one nation *must have power to regulate its foreign commerce;* to colonize its large domain; to provide an adequate revenue; and to establish justice in domestic trade by prohibiting the separate States from

impairing the obligation of contracts. Each of these causes was of vital importance; *but the necessity for regulating commerce gave the immediate impulse to a more perfect Constitution.*

On the next page, he enters into the following details of the commercial problem:

The States could not successfully defend themselves against the policy of Great Britain by separate legislation, because it was not the interest of any one of them to exclude British vessels from their harbors unless the like measure should be adopted by every other; and a union of thirteen distinct powers would encounter the very difficulty which had so often proved insuperable. But while every increase of the power of Congress in domestic affairs aroused jealousy between the States, the selfish design of a foreign government to repress their industry drew them together against a common adversary.

It was only after the several States had ascertained by experimental knowledge, full of the bitterness of invariable failure, how it was impossible to counteract the aggressions and encroachments of the British trade policy by the different and clashing measures of the individual Legislatures, that they began to tame their prejudices and jealousies into submission to the vital requirements of the general welfare. It was then seen, at least by the better class of minds, that home industry could not thrive, and the navigation interests of America could not be shielded, unless controlling authority should be lodged with Congress to frame commercial regulations obligatory upon every member of the Confederation. To reach that conclusion, the people had to make a tedious and wearisome journey from one extreme to another of belief. The bulk of mankind are too much engaged in private concerns to anticipate the operation of national causes. Before

they will clearly perceive, they must deeply feel, suffering thus becoming the schoolmaster of their convictions. It was by long and painful experience with the restrictions placed by the mother country upon the productive resources of the colonies, that the popular masses learned to regard those restrictions as serious evils to be resisted as fatal to civil liberty. When the colonies became independent States, they could not conceive that it would be politic or right to imitate, in their own behalf, the system which was repugnant to their notions of justice while practiced by Great Britain. Her persistence in the same exclusive and self-aggrandizing system of commercial regulations, so far as the altered circumstances would permit, after the close of the war, had been so greatly injurious to the maritime and exporting interests of America, that the belief was reinforced that the system was founded upon inherently wrong principles; hence, public sentiment inclined to the opposite extreme, which was free trade. On this point, Minot says, in his "History of the Insurrections in Massachusetts," page 7:

> Their honest prejudices were averse from duties of impost and excise, which were, at that time, supposed to be anti-republican by many judicious and influential characters. These measures, therefore, could be adopted, at first, but partially and to small effect.

Some four years of actual contact with the evils caused by unrestricted foreign commerce were requisite to fully purge from the minds of the people their predilections in favor of the free-trade policy, and to reveal to them the necessity of warding off European encroachment by means of navigation laws and protective duties on imports, at the hands of the general government. In several of the States, however, a movement in that

direction, but under local authority, began to take practical shape as early as 1785. Bancroft says, in the first volume of his "History of the Formation of the Constitution," beginning on page 186:

The country began to be in earnest as it summoned Congress to change its barren discussions for efficient remedies. The ever increasing voice of complaint broke out from the impatient commercial towns of the northern and central States. On the 11th of January, 1785, the day on which Congress established itself in New York, the artificers, tradesmen, and mechanics of that city, as they gave it a welcome, added these brave words: "We hope our representatives will coincide with the other States in augmenting your power to every exigency of the Union." The New York Chamber of Commerce in like manner entreated it to make the commerce of the United States one of the first objects of its care, and to counteract the injurious restrictions of foreign nations. The New York Legislature, then in session, imposed a double duty on all goods imported in British bottoms.

On the 22d of March, 1785, a bill to "protect the manufactures" of Pennsylvania by specific or ad valorem duties on more than seventy articles, among them on manufactures of iron and steel, was read in its Assembly for the second time, debated by paragraphs, and then ordered to be printed for public consideration. The citizens of Philadelphia, recalling the usages of the Revolution, on the 2d of June held a town meeting; and, after the deliberations of their committee for eighteen days, they declared that relief from the oppressions under which the American trade and manufactures languished could spring only from the grant to Congress of full constitutional powers over the commerce of the United States; that foreign manufactures interfering with domestic industry ought to be discouraged by prohibitions or protective duties. They raised a committee to lay their resolutions in the form of a petition before their own Assembly, and to correspond with committees appointed elsewhere for similar purposes. On the 20th of September, after the bill of the Pennsylvania Legislature had been nearly six months under consideration by the people, and after it had been amended by an increase of duties, especially on manufactures of iron, and by

a discriminating tonnage duty on ships of nations having no treaty of commerce with Congress, it became a law with general acclamation.

Pennsylvania had been cheered on its way by voices from Boston. On the 18th of April the merchants and tradesmen of that town, meeting in Faneuil Hall, established a committee of correspondence with merchants of other towns, bound themselves not to buy British goods of resident British factors, and prayed Congress for the needed immediate relief. Their petition was reserved by Congress for consideration when the report of its Committee on Commerce should be taken up. The movement in Boston penetrated to every class of its citizens; its artificers and mechanics joined the merchants and tradesmen in condemning the ruinous excess of British importations. To these proceedings Grayson directed the attention of Madison.

* * * Two years before, Boston, in its mandate to the men of its choice, had, in extreme language, vindicated the absolute sovereignty of the State; the town, no longer wedded to the pride of independence, instructed its representatives in this wise: Peace has not brought back prosperity, foreigners monopolize our commerce; the American carrying trade and the American finances are threatened with annihilation; the government should encourage agriculture, protect manufactures, and establish a public revenue; the Confederacy is inadequate to its purposes; Congress should be invested with power competent to the wants of the country; the Legislature of Massachusetts should request the Executive to open a correspondence with the governors of all the States; from national unanimity and national exertion we have derived our freedom; the joint action of the several parts of the Union can alone restore happiness and security.

The preamble to the Pennsylvania tariff, above mentioned, is remarkable for its detailed declaration of reasons for the passage of the act, and is in these words:

Section 1. Whereas divers useful and beneficial arts and manufactures have been gradually introduced into Pennsylvania, and the same have at length risen to a very considerable extent and perfection, insomuch that *during the late war between the*

United States of America and Great Britain, when the importation of European goods was much interrupted, and often very difficult and uncertain, the artisans and mechanics of this State were able to supply, in the hours of need, not only large quantities of weapons and other implements, but also ammunition and clothing, without which the war could not have been carried on, whereby their oppressed country was greatly benefited and relieved.

SEC. 2. And whereas, *although the fabrics and manufactures of Europe and other foreign parts, imported into this country in times of peace, may be afforded at cheaper rates than they can be made here, yet good policy and a regard to the well-being of divers useful and industrious citizens, who are employed in the making of like goods in this State, demand of us that moderate duties be laid on certain fabrics and manufactures imported, which do most interfere with, and which (if no relief be given) will undermine and destroy the useful manufactures of the like kind in this country:* For this purpose, etc.

This clear and deep insight into the vital connection between duties on imports and the growth of prosperous manufactures, in which the sagacity of Pennsylvania preceded all her sister States, is sufficient of itself to account for the steadfast fidelity of her people, no matter what their partisan affiliations, to the American system of protection to home industry; and also to account for the fact that she is always found "at the front" in repelling assaults upon that system. William Penn, her founder, was assiduous in cultivating ideas of the importance of industrious habits among the early settlers; and Benjamin Franklin, his successor in public esteem and influence, was equally zealous in disseminating the same views, until idleness, or whatever led to idleness, became in a peculiar degree an object of aversion. This training, at the outset of the life of the Commonwealth, and in its youthful years, no doubt gave that bent to the minds of the community which was

felt in framing the Pennsylvania tariff of 1785, and which has been felt in a similar way ever since, keeping her in the van of States on the tariff question.

In those days, however, which tried men's souls, the other States, enlightened by experience to understand the true cause of dissatisfaction and distress all over the land, were beginning to concede that the Pennsylvania idea, applied uniformly to the entire country, was the only remedy which could bring full and permanent relief. Turn where the people would, they perceived one universal sense of present or impending ruin, depressing the energies and darkening the prospects of the citizen; and they could trace it all primarily to the destructive influences of unrestricted foreign trade. It was with this knowledge impressed upon his memory that Fisher Ames said in the House of Representatives, in 1789, when debating the first tariff bill:

> I conceive, sir, that the present Constitution was dictated by *commercial necessity*, more than any other cause. *The want of an efficient government to secure the manufacturing interest*, and to advance our commerce, was long seen by men of judgment, and pointed out by patriots solicitous to promote our general welfare.

Daniel Webster was brought to the same conclusion by his researches among the records of our history. This giant in intellect, whose deliberate utterances on constitutional questions carried, in his day, almost the force of judicial decisions by the highest court, said, in his remarks to the citizens of Buffalo, June, 1833:

> The protection of American labor against the injurious competition of foreign labor, so far, at least, as respects general handicraft productions, *is known historically to have been one end designed to be obtained by establishing the Constitution.*

But he gave forth his views with more emphasis,

directness, and detail, in his speech at the Albany mass-meeting, August 27, 1844. Then he said:

The term [regulation of commerce] was well understood in our colonial history, and if we go back to the history of the Constitution, and of the Convention which adopted it, we shall find that everywhere, when masses of men were assembled, and the wants of the people were brought forth into prominence, the idea was held up, that domestic industry could not prosper, manufactures and the mechanic arts could not advance, the condition of the common country could not be carried up to any considerable elevation, unless there should be one government, to lay one rate of duty upon imports throughout the Union, from New Hampshire to Georgia; *regard to be had, in laying this duty, to the protection of American labor and industry.* I defy the man in any degree conversant with history, in any degree acquainted with the annals of this country from 1787 to the adoption of the Constitution in 1789, *to say that this was not a leading, I may almost say, the leading motive, South as well as North, for the formation of the new government. Without that provision in the Constitution, it never could have been adopted.*

Rufus Choate, another acknowledged master of constitutional interpretation, took exactly the same view in his speech in the United States Senate, March 14, 1842, on "the power and duty of Congress to continue the policy of protecting American labor." He said:

A whole people, a whole generation of our fathers, had in view, as one grand end and purpose of their new government, *the acquisition of the means of restraining, by governmental action, the importation of foreign manufactures, for the encouragement of manufactures and of labor at home, and desired and meant to do this by clothing the new government with this specific power of regulating commerce.*

Even from England comes a confirmation of the same general view. In his "Addresses" (Vol. I., page 83), Edward Everett says:

It has been, within a few years, stated by Mr. Huskisson, and with truth, that the real causes of the Revolution are to be found, not in the irritating measures that followed Mr. Grenville's plan of taxation, but in the long-cherished discontent of the colonies at this system of legislative oppression. Accordingly the first measures of the patriots aimed to establish their independence on the basis of the productive industry and the laborious arts of the country.

With such an intention guiding the attempt of the colonies to throw off the yoke of the mother country, what momentum and force that intention must have acquired when, after the war, it was learned, in the school of impoverishment and suffering, that political independence was not in itself any defense against the aggressions of Great Britain upon the manufacturing industries of the United States. Industrial independence, the necessary support of political independence and national unity, was then seen to be attainable only by enlarging and strengthening the powers of the general government, and especially by conferring upon Congress the supreme authority to regulate commerce with foreign nations. This desire to secure industrial independence was the most determinate, impelling, decisive of all the motives for the formation of "a more perfect Union," endowed with ample capacity to encourage and protect home manufactures. The historical records are explicit, numerous, positive, and marvelously concurrent on this point, leaving no room for honest doubt, and furnishing proof not to be exceeded in convincing force even by a demonstration in mathematics. No man can lay his finger upon an atom of evidence to the contrary. All the prominent and influential events, as well as those of a subordinate and auxiliary character, which either preceded or ac-

companied, or immediately followed, the change from the Confederation to the new Union, urgently reinforce the statement, that the people of this country demanded a Union stronger than the Confederation, for the very purpose of shielding home industry from the prostrating assaults of foreign competition, through the regulation of commerce with other nations, so as to check or to prohibit the importation of commodities interfering with the growth and prosperity of domestic manufactures, and so as to give native production an impetus which would develop all the resources inherent within the boundaries of the nationality, essential for the supply and consumption of the population, whether in times of peace or war. Gibralter's rock is not more securely established than this fact.

CHAPTER VIII.

FIRST EFFECTS OF THE NEW PLAN OF GOVERNMENT.

The proposed Constitution of the United States, perfected and signed by the Federal Convention, September 17, 1787, was submitted to the consideration of the several States by the act of September 28, in the same year, passed by the Congress of the Confederation. As State after State ratified the new organic law, the event was greeted with public rejoicings and enthusiastic parades in many of the towns and cities. At length the present Union was completed, and made an operative existence, by the assent of New Hampshire, June 21, 1788—the ninth in order of sequence, and fulfilling the conditions of the instrument. Everywhere the popular mind turned to the new government with ardent expectation that it would supply the long-felt need of protection to home industry; and the chronicles of the time abound with evidences that such a realization was almost universally regarded as one of the most important and beneficial of the consequences to follow the change of political structure—as the very keystone of the arch. No wonder Mathew Carey was able to say, in "The New Olive Branch," page 47:

> The adoption of the Federal Constitution operated like magic; produced a total change in the state of affairs; and actually removed no small portion of the public sufferings, by the confidence it inspired, even before the measures of government could be carried into effect.

On the same subject Bishop says, in his "History of

American Manufactures," second volume, beginning on page 14:

Hence the general enthusiasm with which the adoption of the new Constitution was hailed in the principal centers of mechanical industry and trade as the palladium of the future industrial interests of the nation. The new form of government organized under it was regarded by the agricultural, manufacturing, and commercial classes, with no vain confidence, as securing to their investments and labors those immunities and rewards which they had sought in vain under the old Confederation. A more efficient administration of affairs now took the place of the wretched system of distrust, jealousy, and weakness which had paralyzed all enterprise; and new energy was infused into all departments of business. Agriculture improved rapidly; commerce expanded; and manufactures, which were still subordinate in importance to the former, put forth bolder efforts. American labor began steadily to change its form from a general system of isolated and fireside manual operations—though these continued for some time longer its chief characteristic—to the more organized efforts of regular establishments with associated capital and corporate privileges, employing more or less of the new machinery which was then coming into use in Europe. * * * That the productive classes regarded the Constitution of 1787 as conferring the power and right of protection to the infant manufactures of the country, and thus of seconding the general zeal for their increase, is manifest from the jubilant feeling excited in various quarters upon the public ratification of that instrument. Their confidence in the ability and disposition of the new government formed under it to aid them, as well as the extreme peril in which their interests were then placed, are also apparent from the fact that the first petition presented to Congress, after its first assembling in March, 1789, emanated from upward of seven hundred of the mechanics, tradesmen, and others of the town of Baltimore, lamenting the decline of manufactures and trade since the Revolution, and praying that the efficient government with which they were then blessed, for the first time, would render the country "independent in fact as well as in name," by an early attention to the encouragement and protection of American manufactures, by imposing on

"all foreign articles which could be made in America such duties as would give a decided preference to their labors."

Evidence exists in overflowing abundance to show that the great body of the people burned with intense anxiety, and with hot impatience, to be rid of industrial dependence upon foreign countries, particularly upon Great Britain; and that the prospect of deliverance centered in the recently-adopted Constitution, and in the strong government to which it gave existence. Tucker, in his "History of the United States," first volume, beginning on page 384, adds his testimony thus:

The country, now buoyant with hopes, in proportion to the dangers it had recently escaped, and the evils it even then encountered, looked forward with impatience to the meeting of the first Congress under the new Constitution. The officers of the army, who had not made sale of their unsatisfied claims, saw in the new government, provided as it was with unlimited powers of taxation, the prospect of justice from their country. The other public creditors, who were generally people of property and influence, looked forward to have their claims doubled or even quadrupled in value. The merchant and ship-owner confidently expected protection from the discriminating duties and navigation laws of other countries; and even the small manufacturing class hoped for the encouragement of a protective impost. The agricultural class, without looking for any immediate benefit from legislation, expected to share in the general prosperity, and to profit by an improvement of the markets, both foreign and domestic. In the cities, especially, where these benefits were more fully appreciated, there were pompous and costly demonstrations of the general joy.

Before the new order of things could go into operation, means of partial relief had been sought in voluntary associations, and in an appeal to the patriotism of their fellow-citizens. Such a society was formed in Boston in 1787 or 1788, and a circular letter was addressed by its membership to their brethren through-

out the Union. The following address from the "Tradesmen and Manufacturers of New York," dated November 17, 1788, in answer to that circular, expresses the feelings and hopes with which the laboring classes of the country, particularly those engaged in the various branches of mechanical industry, looked forward to legislation under the new Constitution for full and permanent relief:

GENTLEMEN:—The mechanics and manufacturers of the city of New York have long contemplated and lamented the evils which a pernicious system of commerce has introduced into this country, and the obstacles with which it has opposed the extension and improvement of American manufactures; and having taken into consideration your circular letter, wherein those evils and their remedies are pointed out, in a just and striking manner, have authorized us to communicate to you, in answer to your address, their sentiments on the interesting subject.

It is with the highest pleasure that we embrace this opportunity to express to you their approbation of the liberal and patriotic attempt of the tradesmen and manufacturers of your respectable town.

Every zealous and enlightened friend to the prosperity of this country must view, with peculiar regret, the impediments with which foreign importations have embarrassed the infant arts in America. We are sensible that they are not only highly unfavorable to every mechanical improvement, but that they nourish a spirit of dependence, which tends in some degree to defeat the purposes of our late Revolution, and tarnish the luster of our character. We are sensible that long habit has fixed, in the minds of the people, an unjust predilection for foreign productions, and has rendered them too regardless of the arguments and complaints with which the patriotic and discerning have addressed them from every quarter. The prejudices have become confirmed and radical; and we are convinced that a strong and united effort is necessary to expel them. We are happy that the tradesmen of Boston have led the way to a general and efficient exertion in this important cause.

This impression we feel of the utility and expediency of encouraging our domestic manufactures is in perfect correspondence with your own; and we shall most cheerfully unite our endeavors with those of our brethren throughout the Union, and shall be ready to adopt every measure which will have a tendency to facilitate the great design.

The Legislature of our State, convinced of the propriety of cherishing our manufactures in their early growth, have made some provisions for that purpose. We have no doubt that more comprehensive measures will in time be taken by them. But on the confederated exertions of our brethren, and especially on the patronage of the Federal Government, we rest our most flattering hopes of success.

In order to support and improve the union and harmony of the American manufacturers, and to render as systematic and uniform as possible their designs for the common benefit, we perfectly concur with you in the propriety of establishing a reciprocal and unreserved communication. When our views, like our interests, are combined and concentrated, our petitions to the Federal Legislature will assume the tone and complexion of the public wishes, and will have a proportionable weight and influence.

We request you to favor us with the continuance of your correspondence, and to transmit to us, from time to time, such resolutions and proposals of your association as may be calculated for the promotion of our mutual interests.

We are, with the highest respect, etc.

Here the power, the obligation, and the likelihood of the new government to enact laws for the specific purpose of encouraging domestic industry, and of defending it from the evil effects of foreign importations, excessive in quantity and prostrating to home competition, were taken for granted with that strong confidence which can proceed only from absence of all doubt or fear of contradiction. In those days the idea was undisputed that one of the principal objects in ordaining and establishing the Constitution of "the more perfect Union" was to secure to American capital and American

labor, to American skill and American enterprise, immunity from the malign influences of European interference, to the end that American resources might be developed, American progress might be accelerated, and American prosperity might be assured. Such expectation and such reliance were constantly manifested on those numerous occasions all over the country, when men came together in formal assemblies to celebrate, with exultant hearts, the grand event of completed ratification of the new plan of government. Rufus Choate, in his speech in the United States Senate, April 12 and 15, 1844, on "Protecting American Labor by Duties on Imports," portrayed in glowing yet truthful words these exhibitions of the popular joy. He said:

Sir, the Congress of 1789 might have known, by another and shorter process, the public sentiment of that day—the public sentiment of the age of the Constitution. There were members who had witnessed and united in some one of the processions and assemblies which, in so many towns and villages, had just been celebrating the institution of the new government; and they might have learned there what the people expected of them! Very striking exhibitions they were, sir; and altogether worthy of the contemplation of him who would truly and adequately know for what the Constitution was created. On an appointed day, men came in from the country, and mingling themselves with those of the town, were arranged in order by thousands. Beneath bright skies—the moral and national prospect how much brighter than the natural!—with banners and music, gazed on, sympathized with by wives, and mothers, and daughters, and sisters, thronging at windows, in balconies, and up to the house tops, the long and serried files of labor, moved from street to street, and at length composed themselves to unite in thanksgiving to God, and in listening to discourses commemorative of the event, and embodying the gratitude and the expectations with which the new government was welcomed in; embodying a survey of its powers and objects, and a sketch of the transcendent good of which it was full, for

that age, and for all time. Sir, in the banners of various device which marked the long course of those processions; in the mottoes upon their flags; in the machines, and models and figures, with which the pacific and more than triumphant march was enriched and enlivened; in the order of its arrangements; in the organization of tradesmen and artisans, and all the families of labor which swelled it; in the conversation of individuals of those "grave and anxious multitudes" one with another, in the topics and thoughts of the orators of the day; in the applause of the audience; in all this vast, vivid, and various accumulation and exhibition of the general mind, almost as well as in the journals of the Convention, the Madison papers, the debates of public bodies, or the grave discussions of the "Federalist" itself, you may read—the Congress of 1789 might read—what kind of government the people thought they had constructed. I could almost say that the Constitution is what the general belief of that age held it to be; and in these great and solemn festal scenes is the expression of that general belief.

Take the Philadelphia procession for an instance, of the fourth of July, 1788, and see what the readers of poor Richard's Almanac, the pupils and contemporaries of Franklin, expected of the Federal Constitution. It was a column of many thousands of persons, of trades and callings. The more advanced figures and devices of the procession were intended to represent, in a chronological series, the great events which preceded the adoption of the new government. There was one on horseback, representing Independence, and bearing the staff and cap of liberty; next followed one, riding upon a horse, formerly of Count Rochambeau, and carrying a flag, with devices of lilies and stars, commemorative of the French alliance, to which we owed so much; then another, with a staff surmounted with laurel and olive, announcing the treaty of peace; after him, another, bearing aloft the name of Washington; then a herald, proclaiming with sound of trumpet the NEW ERA; then a representation of the Convention which framed the Constitution; and then others of the Constitution itself—"a lofty ornamental car, in the form of an eagle"; and "a grand federal edifice, the dome supported by thirteen columns, and surmounted by a figure of plenty." After these came an appropriate and golden train—the long line of the various labor of America, for whom the new era had risen, with healing on its

wings. First, as it ought to have been, was the agricultural society. Then came the manufacturing society, with spinning and carding machines; looms and apparatus for the printing of muslins and calicos. This bore three flags. The device on one was a bee-hive, with bees issuing from it, standing in the beams of a rising sun; the field of the blue flag, and the motto, "In its rays we shall feel new vigor." The motto on the next was, "May the Union Government protect the manufactures of America"; and on the next, "May Government protect us." On the carriage of the manufacturers, drawn by ten horses, were a carding machine, worked by two persons, "carding cotton"; a spinning machine, worked by a woman, and drawing cotton suitable for fine jeans; looms on which laces and jeans were being woven; a man designing and cutting prints for shawls; and "Mrs. Hewson and her four daughters," in cotton dresses of their own manufacture, penciling a piece of chintz of Mr. Hewson's printing. There followed then great numbers—I believe there may have been more than fifty bodies of tradesmen and mechanics, each with its banner, devices and motto, expressive of the same hopes and the same convictions, evidencing equally the universal popular mind. But I need pursue the matter no further. Sir, what was seen in this procession was seen, on a larger or smaller scale, everywhere. The pageant is passed. The actors have retired from human view. The awful curtain has dropped on them forever. All the world's a stage, and this part is played! Yet the spirit of philosophical history—that spirit to which the half-obliterated figures of a procession upon a wasting architectural fragment reveal, intelligibly and instructively, some glory or some sorrow of a past age—will not disdain to gather up and ponder these manifestations of the hopes, desires and purposes of that mighty heart now hushed. I do not wish or expect to understand the objects for which the Constitution was framed better than the generation which made it; and of their understanding of them I have referred you to very vivid and very authentic proofs. I cannot forbear to read to you a sentence or two, before I take leave of the subject, from "Observations on the Philadelphia Procession," written by an eye-witness, very soon after the celebration:

"The large stage on which the carding and spinning machines dis-

played the manufacture of cotton was viewed with astonishment and delight by every spectator. On that stage were carried the emblems of the future wealth and independence of our country. Cotton may be cultivated in the Southern and manufactured in the Eastern and Middle States, in such quantities, in a few years, as to clothe every citizen of the United States. *Hence will arise a bond of Union to the States, more powerful than any article of the new Constitution.* Cotton possesses several advantages over wool as an article of dress and commerce. It is not liable to be moth-eaten, and is proper both for winter and summer garments. It may, moreover, be manufactured in America at a less expense than it can be imported from any nation in Europe. From these circumstances, I cannot help hoping that we shall soon see cotton not only the uniform of the citizens of America, but an article of exportation to foreign countries. Several respectable gentlemen exhibited a prelude of these events by appearing in complete suits of jeans, manufactured by the machines that have been mentioned."

Compare this with the judgment of Mr. Calhoun, in his speech in the House of Representatives, April, 1816: "Capital employed in manufacturing is calculated to bind together more closely our widely spread Republic. It will increase our mutual dependence and intercourse."

Thus, many months before the new government could be organized in its various departments, and could undertake the work of passing and administering remedial laws, the ratified Constitution was accepted everywhere, by statesmen and people alike, including all classes of the population, openly, avowedly, formally, without dispute, without hesitation, without distrust, as a guarantee that Congress had been vested with and would exercise the power of protecting and fostering the agriculture, the tonnage, the navigation, the commerce, and the manufactures of the nation. It does not seem to have entered into anybody's mind to suppose to the contrary. There was only one opinion on the subject.

Prospective relief became, to some extent, relief itself; for confidence in the present was restored by the universal trust in the future. It was like a besieged

city, reduced almost to extremity, but lifted from despair to hope by sight of approaching deliverance. Industry began to revive in the genial warmth of this new-born confidence. Even the diplomatic agents of foreign governments felt obliged to notice, in their official correspondence, the favorable change which was taking place. Lord Dorchester communicated the following views to the British Cabinet, under date of October 14, 1788:

The manufactures of the States are in their infancy, yet the enterprising genius of the people may be gathered from the great exertions of individuals in this branch under all their present embarrassments. In Connecticut, attempts have been made to make silk, and with success; specimens are shown at New Haven College, and Dr. Styles, the president, who is a man of genius and perseverance, is indefatigable at present in promoting it. Nail manufactories are already established; there are two in Albany that supply the whole country, and the importation of nails from Great Britain has ceased in that neighborhood. A white-glass manufactory has lately been set on foot in Jersey, and the sale is not inconsiderable.

Pennsylvania has taken the lead in various branches of manufacture; it is said that there are at this time between two and three hundred stocking looms in the city of Philadelphia and different parts of the State, with full employment. Machines for carding and spinning cottons have been introduced, and jeans can be made on moderate terms. The culture of cotton is at present much attended to in the Southern States.

Similar observations passed between the public men of the United States. St. John Crevecœur wrote from New York to Jefferson, October 20, 1788:

Never was so great a change in the opinions of the best people as has happened these five years; almost everybody feels the necessity of coercive laws, government, union, industry, and labor. I hope the small differences entertained by some people about the

mode of regeneration will no longer be a barrier; such will be the foundations of America's future peace, opulence, and power. The exports of this country have singularly increased within these two years, and the imports have decreased in proportion; manufactures of the most useful kind are establishing in Pennsylvania, Connecticut, and Massachusetts; in the South they begin to cultivate cotton, and in the North they are erecting engines to spin it. Nails, canvas, cordage, glass, woolens, linens are now making as good of their kind as any in Europe. Bridges are building everywhere, new communications are opening, new settlements forming; the fisheries have been singularly prosperous this year; even here a singular spirit of improvement is conspicuous; they are paving all their streets in *dos d'âne*, with elegant foot-paths on each side; toward the North river immense docks are filling up with the adjacent banks, over which a beautiful street, sixty feet wide, is already laid out, which begins at the Battery and is to extend two miles, a considerable part of which is already done and paved. Four thousand pounds have been subscribed for embellishing and enlarging the City Hall, in order to accommodate the new federal corps with more decency, and Major l'Enfant has been appointed to preside over the works, which he has planned himself. This country, once consolidated, will easily pay its debts, by a wise system of commercial law encourage the industry of its inhabitants, and draw forth all their genius.

D. Humphries wrote from Mount Vernon to Jefferson, November 29, 1788:

The arts of peace are progressing in the old States, perhaps more rapidly than they have ever before done. The spirit of improvement is gaining ground. The three great bridges lately erected in Massachusetts do that State vast credit. The enterprise in trade and manufactures, supported by domestic economy, has, during the last year, for the first time made the exports from thence considerably more valuable than the imports into it. To this the trade in the East Indies has not a little contributed.

It is not difficult to point out the causes of this great change for the better. Behind the people spread a gloomy past, embittered with unredressed grievances

and the harsh discipline of suffering; in the forward distance appeared the dawn of a new era, aglow with bright promises. Cheered by that magnificent prospect, all classes turned their faces resolutely toward the future. Enterprise woke from its long sleep. Capital ceased to keep aloof from industrial undertakings, and took hold of ventures with both hands. Confidence, leaning fondly on hope, waved her enchanted wand over the scene, and industry began to ply her busy trades. Satisfaction and tranquillity left no room for the foreboding and the discord which for years had disturbed the American commonwealths. This was because the belief had become general that liberty had been strengthened, the rights of labor rescued, the destiny of the republic exalted, and the happiness of mankind increased, by the establishment of the new federal government, which thus, even before its legislative machinery could be set in motion, gave to all the material interests of the country some of the effects of positive *protection*. The "more perfect Union" was in itself alone a system of national defense, compared with the feebleness and inefficacy of the Confederation, so that society felt in all its ramifications the beneficial influence of a realization of greater security.

CHAPTER IX.

PETITIONS TO CONGRESS FOR PROTECTION.

The first Wednesday in March, 1789, which was the fourth of the month, had been fixed by law as the date on which to inaugurate the new government; but a quorum of the House of Representatives was not formed until the following first of April. Within one week from that day, James Madison brought forward the subject of the tariff, as the most important which could engage the attention of members, and as the most pressing and indispensable of the measures to be acted on at that session. Just three days after the discussion commenced, a petition was presented from "the Tradesmen, Mechanics, and others of the Town of Baltimore," in which they said:

> The happy period having now arrived when the United States are placed in a new situation, and the adoption of the general government gives one sovereign Legislature the sole and exclusive power of laying duties upon imports, your petitioners rejoice at the prospect this affords them; and America, freed from the commercial shackles which have so long bound her, will see and pursue her true interest, becoming independent in fact as well as in name. And they confidently hope that the encouragement and protection of American manufactures will claim the earliest attention of the supreme Legislature of the nation; as it is a universally acknowledged truth that the United States contain, within their limits, resources amply sufficient to enable them to become a great manufacturing country, and only want the patronage and support of a wise, energetic government.

Below is a condensed summary of this petition, recorded in the House Journal, as—

Setting forth that, since the close of the late war and the completion of the Revolution, they have observed with serious regret the manufacturing and the trading interest of the country rapidly declining, and the attempts of the State Legislatures to remedy the evil failing of their object; that, in the present melancholy state of our country, the number of poor increasing for want of employment, foreign debts accumulating, houses and lands depreciating in value, and trade and manufactures languishing and expiring, they look up to the supreme Legislature of the United States as the guardians of the whole empire, and from their united wisdom and patriotism and ardent love of their country, expect to derive that aid and assistance which alone can dissipate their just apprehensions, and animate them with hopes of success in future, by imposing on all foreign articles which can be made in America, such duties as will give a just and decided preference to their labors, discountenancing that trade which tends so materially to injure them and impoverish their country—measures which, in their consequences, may also contribute to the discharge of the national debt and the due support of government; that they have annexed a list of such articles as are or can be manufactured amongst them, and humbly trust in the wisdom of the Legislature to grant them, in common with the other mechanics and manufacturers of the United States, that relief which may appear proper.

Considering the long and intense and embittered opposition of the South, in later years, to the protective system, on the ground of its unconstitutionality, the next petition, presented the very next day, possesses extraordinary significance. That petition came from the shipwrights of the principal city in the State which, in 1832, raised the banner of nullification against the tariffs of 1824 and 1828, and threatened separation from the Union unless the offensive laws should be annulled. The signers begged Congress to *protect* them from foreign encroachment. Here is their appeal, as it exists upon the records of the nation's House of Representatives:

A petition of the shipwrights of the city of Charleston, in the State of South Carolina, was presented to the House and read, stating the distress they are in, from the decline of that branch of business and the present situation of the trade in the United States, and praying that the wisdom and policy of the National Legislature may be directed to such measures, in a general regulation of trade and the establishment of a proper navigation act, as will tend to relieve the particular distresses of the petitioners, and in common with them, those of their fellow-shipwrights throughout the United States.

In a similar appeal from a considerable number of the citizens of New York, the same reliance on the constitutional power of Congress was expressed:

Your petitioners conceive that their countrymen have been deluded by an appearance of plenty; by the profusion of foreign articles which has deluged the country; and thus have mistaken excessive importations for a flourishing trade. To this deception they impute a continuance of that immoderate prepossession in favor of foreign commodities which has been the principal cause of their distresses, and the subject of their complaint.

Wearied by their fruitless exertions, your petitioners have long looked forward with anxiety for the establishment of a government which would check the growing evil, and extend a protecting hand to the interests of commerce and the arts. *Such a government is now established.* * * * To your honorable body the mechanics and manufacturers of New York look up with confidence, convinced that, *as the united voice of America has furnished you the means*, so your knowledge of the common wants has given you the spirit to unbind our fetters, and rescue our country from disgrace and ruin.

Only a few days afterward, still another petition for legislative aid to home industry was presented, this time from the inhabitants of Boston. Below is an extract:

Your petitioners need not inform Congress that, on the revival of our mechanical arts and manufactures, depend the wealth and prosperity of the Northern States; nor can we forbear mentioning

to your honors, that the citizens of these States conceive the object of their independence but half obtained, till those national purposes are established on a permanent and extensive basis by the legislative acts of the Federal Government. Unless these important branches are supported, we humbly conceive that our agriculture must greatly decline, as the impoverished state of our seaports will eventually lessen the demand for the produce of our lands.

Your petitioners formerly experienced the patronage of this State Legislature, in their act of laying duties and prohibitions on certain articles of manufacture, which encourages your petitioners to request that heavy duties may be laid upon such articles as are manufactured by our own citizens, humbly conceiving that *the impost is not solely considered by Congress* AS AN OBJECT OF REVENUE, *but, in its operation, intended to exclude such importations, and ultimately establish these several branches of manufacture among ourselves.*

Here the constitutional power "to regulate commerce with foreign nations" is assumed, with the utmost confidence, to signify both authority and purpose to leave out of sight, in levying duties on imports, all considerations of revenue as the main object, so that the paramount tendency may be toward the creation and sustainment of domestic industry; and this position is indicated as altogether beyond the realm of debate, uncertainty, or contradiction—as settled, fixed, unquestionable. Had there been doubt on the subject—if there had been room or reason for distrust and hesitation—no body of citizens would have ventured to unite in formally submitting such statements to the House of Representatives, with any hope of securing respectful attention. The very fact that an appeal of this kind could be signed by many men of intelligence, and presented as their deliberate act, with a serious expectation of influencing the passage of laws, is in itself a strong

presumption of the legitimacy of their views of Congressional prerogative.

The petitions represented all sections of the Union. Those above noted, however, embrace only a small part of the number laid before Congress. Now, how were these appeals received by the agents of the people? Let Daniel Webster, the "Expounder of the Constitution," tell, in the words he spoke at the great mass-meeting at Albany, August 27, 1844. He said, in referring to the very records from which extracts have been quoted:

> Now, I ask you again, how were these petitions for protection treated? Did Congress deny its power? Did it say that it could not possibly give them this protection, unless it should happen to be *in-ci-den-tal?* Did it say we have only a *revenue* power in regard to this matter? that is, We have the clear and undoubted power to take so much money out of your pockets, and apply it to our own purposes; but God forbid that, in doing so, we should do you any good at the same time? Were these petitioners told that they must take care of themselves? that these were days of free trade, and everybody must have a right to trade on equal terms with everybody else? Far, far from it. In regard to the subject of these petitions, we all know that the very first Congress secured to the navigation of the United States that which has been, from that time to this, the great foundation, not only of preference, but of *monopoly*—the whole coasting trade of the Union; and the shipwrights of America enjoy that monopoly to the present day, and I hope they will enjoy it forever. Look at the coasting trade of the United States, so vast in its extent. It is entirely confined to American shipping. * * *
>
> But how did Congress treat these petitions from the cities of New York and Baltimore, to extend protection to the mechanic arts? It *granted* them. It *yielded* it. And except a formal act for taking the oaths, the very first act passed by Congress was to secure the coasting trade and protect the mechanic arts, by discriminating duties, and thus carry out the clear, and according to historical testimony, *the most manifest object of the Constitution.*

Rufus Choate, after a diligent study of the annals of the country, with a strong desire to ascertain the truth, took the same ground as Daniel Webster. In his speech on "the power and duty of Congress to continue the policy of protecting American labor," delivered in the Senate of the United States, March 14, 1842, he said:

And who in that assembly of men—many of whom sat in the Convention which framed the Constitution, all of whom had partaken in the discussions which preceded its adoption—breathed a doubt on the competence of Congress to receive such petitions as these, and to grant their prayer? "I conceive" (said the most eloquent of the eloquent, Mr. Ames), "I conceive, sir, that the present Constitution was dictated by commercial necessity more than any other cause. The want of an efficient government to secure the manufacturing interest and to advance our commerce was long seen by men of judgment, and pointed out by patriots solicitous to promote our general welfare." But I have more to say before I have done, on the proceedings of that Congress, and leave them for the present. In the meanwhile I submit to you that the proof is complete that the people who adopted the Constitution, universally, and without a doubt, believed that it embodied this power. It was for that they received it with one wide acclaim, with tears of exultation, with ceremonies of auspicious significance, befitting the dawn of our age of pacific and industrial glory. Even those who feared its imperial character and its other powers, who thought they saw the States attracted to its center and absorbed by its rays, did not fear this power.

And now, sir, I wonder if, after all, the people were deluded into this belief! I wonder if that heroic and energetic generation of our fathers, which had studied the controversies and had gone through the tasks of the Revolution; which had framed the Confederation, proved its weakness, proved its defects; which had been trained by a long and dreary experience of the insufficiency of a nominal independence to build up a diffused, and massive, and national prosperity, if the trade laws of foreign governments, the combinations of foreign capitalists, the necessities of foreign

existence, are allowed to take from the native laborer his meal of meat, and from his children their school, and depress his standard of comfortable life; which had been trained by experience, by the discussions of its ablest minds, in an age of extraordinary mental activity, and yet of great morality, sobriety, and subordination, peculiarly favorable to the task—trained thus to the work of constructing a new government, I wonder if such a generation were deceived, after all! I wonder if it was not living water, that which they supposed they saw gushing from the rock, and sparkling and swelling at their feet, but only a delusive imitation, struck out by the wand of an accursed enchantment! No sir, *no* man who believes that the people of this country were fit to govern themselves—fit to frame a constitution, fit to judge on it, fit to administer it—no such man can say that the belief, the popular belief in 1789, of the existence of this power, under the circumstances, is not absolutely conclusive proof of its existence.

And then, in addition to this, how do you deal with the fact that all the framers of the Constitution themselves, as well as every public man alive in 1789, and the entire intelligence of the country, supposed they had inserted this power in it?

Did not those who made it know what they had done? Considering their eminent general character, their civil discretion, their preparation of much study and yet more experience of arduous public affairs for the task; their thorough acquaintance with the existing systems, State and national, and with the public mind and opinions of the day; the long, patient and solitary labor which they bestowed on it; the immediate necessity imposed on them of explaining and defending it to the country—in view of this, if you find them unanimously concurring in ascribing this power to the instrument, is it not the transcendentalism of unbelief to doubt? Do we really think we are likely to understand their own work now better than they did the day they finished it?

Well, sir, we have satisfactory evidence that the members of the Convention went, all of them, to their graves in the belief that the Constitution contained this power. Mr. Madison's opinion I have read. We have it on unquestionable authority that Mr. Gallatin has repeatedly said that, upon his entrance into political life in 1789, he found it to be the universal opinion of those who framed the Constitution, and those who resisted its adoption—the

opinion of all the statesmen of the day—that Congress possessed the power to protect domestic industry by means of commercial regulations.

Similar testimony might be extended, if requisite, to many additional pages, derived from historical documents, and from the concurrent views of the entire generation of American statesmen contemporary with the formation of the Constitution, so far as these views have been preserved to the present day. Indeed, it may be set down as beyond reasonable dispute, that no intelligent and candid mind, divesting itself of prejudices and all preconceived notions on the subject, can make an earnest and full search through our annals, from 1763 to 1789, without finding a strongly marked, cumulative, vigorous, and more and more direct movement of events toward the creation and the fruition of a supreme national organism, specially clothed with and exercising authority to protect home industry of every kind against injury from foreign aggression and encroachment, so as to secure a uniform system of commerce, of custom-house duties, and a general regulation of the trade, external and internal, of the whole country—a movement of events which may be compared to a river's current, beginning in weakness at its source, but augmented by tributary streams at various points of its progress; broadened, deepened, accelerated by every new affluent; gathering majestic volume and irresistible force as it nears its estuary; and fulfilling its destiny as it pours forth with final impetuosity into gulf or ocean.

CHAPTER X.

NATURE AND EXTENT OF THE PROTECTING POWER.

Various parts of the Constitution, when considered in the light of the historical circumstances which led to the formation of the new government. are seen very distinctly to be the natural outgrowths—the legitimate and necessary offspring—of certain lesson-teaching experiences which had left a deep impress upon the public mind. Of this sort, for instance, is the provision that "no State shall make anything but gold and silver coin a tender in payment of debts." It is easy to trace this prohibition to the manifold evils which prevailed in some of the States in consequence of making cattle and other property a legal tender for discharging obligations payable by contract in metallic money. Of this sort, also, is the provision that "all duties, imposts, and excises shall be uniform throughout the United States"—a requirement intended to obviate the difficulty, vexation, damage, and bitterness which had resulted from thirteen different tariffs in thirteen different States joined in one federal nationality. In like manner, the intimate connection might be pointed out between many other provisions and particular embarrassments and dangers within the remembrance of the people.

But our organic law furnishes no more curious, complete, signal example of the translation of historical precedent and experience into constitutional authority and obligation than the nature and extent of the protecting power, as related to the defense of home inter-

ests against foreign trespass. This power is usually sought, and supposed to be found, in the grant to Congress "to lay and collect taxes, duties, imposts, and excises"; yet what is really conferred in that clause is the power to raise revenue "to pay the debts and provide for the common defense and general welfare of the United States." Only incidentally—that is to say, through distinctly authorizing entry charges on imports, or one of the principal instrumentalities by which protection can be rendered effectual—is the power to raise revenue connected with the power to encourage and foster and shield domestic industry by national legislation. If there was in the organic law of the Union no more direct reference to the subject, the protecting power would have to be sought by implication, whereas it exists in express terms; and arguments based on a latitudinarian construction of the Constitution would have to take the place of an explicit grant of authority, which is to be found in the prerogative of Congress "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

To fully understand the meaning of this part of the Constitution, it is necessary to know the history of the circumstances which determined the use of this precise formula of words by the framers of our political structure. The expressions, *commercial regulations*, *regulations of trade*, *the power to regulate commerce*, *the power to regulate trade*, and the like, had acquired, in the political and popular language of the day, a definite and uniform sense, so that, according to that sense, a protective tariff was a form of commercial regulation, and the power to regulate commerce included the power to

construct such a tariff. This meaning and intent had been indelibly impressed upon the minds of all classes by a long train of measures of strong and palpable injustice, on the part of Great Britain, toward the American commonwealths, both as colonies and as States—a protracted and expanding series of abuses and grievances, which had chafed, and harassed, and humiliated, and exasperated the whole people, until they were driven, as by relentless pursuit which left no other outlet for escape, to seek deliverance and permanent safety through revolution, political independence, and redemption from industrial vassalage. Whoever has looked deeply into the causes which produced the separation of the colonies from the mother country must have found the origin of the tendency to divorce in England's domineering claim of right to monopolize the trade of her colonial offspring, and in the latter's continued effort to resist or evade that monopoly, the antagonism between this constantly recurring action and reaction precipitating the final collision, with its historical outcome. Daniel Webster, in his discourse on the "First Settlement of New England," points out the beginnings of this mighty movement of events toward severance. He says:

> For a century, causes had been in operation tending to prepare things for this great result. In the year 1660 the English Act of Navigation was passed; the first and grand object of which seems to have been to secure to England the whole trade with her plantations. It was provided by that act, that none but English ships should transport American produce over the ocean, and that the principal articles of that produce should be allowed to be sold only in the markets of the mother country. Three years afterward another law was passed, which enacted, that such commodities as the colonies might wish to purchase should be bought

only in the markets of the mother country. Severe rules were prescribed to enforce the provisions of these laws, and heavy penalties imposed on all who should violate them. In the subsequent years of the same reign, other statutes were enacted to re-enforce these statutes, and other rules prescribed to secure a compliance with these rules. In this manner was the trade to and from the colonies restricted, almost to the exclusive advantage of the parent country. But laws, which rendered the interest of a whole people subordinate to that of another people, were not likely to execute themselves; nor was it easy to find many on the spot, who could be depended upon for carrying them into execution. In fact, these laws were more or less evaded or resisted, in all the colonies. To enforce them was the constant endeavor of the government at home; to prevent or elude their operation, the perpetual object here.

In this protracted see-saw between coercion and resistance — a coercion which could not be executed, and a resistance which could not be repressed — the British policy of interference, restraint, and prohibition, as applied to the maritime, commercial, and manufacturing interests of the colonies, was carried to such an extreme as at length to provoke a searching inquiry into the legitimacy of the principles on which that policy was founded, followed by a solemn protest against it as involving an assault upon the natural and inalienable rights of man. Thus it came to pass that even what had been acquiesced in at first as unobjectionable was finally repudiated as pernicious. David Ramsey, who had been an active and decided participant in the scenes of the Revolution, devoted nearly a page of his once widely read "History of the United States" (Vol. I., page 334), to an exposition of the manner in which the primary object of quarrel was gradually supplemented, until it had added to itself an extensive range of differences. His statement is copied below:

It commonly happens, in the discussion of doubtful claims between States, that the ground of the original dispute insensibly changes. When the mind is employed in investigating one subject, others, associated with it, naturally present themselves. In the course of inquiries on the subject of parliamentary taxation, the restriction on the trade of the colonists, and the necessity that was imposed on them to purchase British and other manufactures, loaded with their full proportion of all taxes, paid by those who made or sold them, became more generally known. While American writers were vindicating their country from the charge of contributing nothing to the common expenses of the empire, they were led to set off, to their credit, the disadvantage of their being confined exclusively to purchase manufactures in Britain. They instituted calculations, by which they demonstrated, that the monopoly of their trade drew from them greater sums, for the support of government, than were usually paid by an equal number of their fellow-citizens of Great Britain; and that taxation, superadded to such a monopoly, would leave them in a state of perfect uncompensated slavery. The investigation of these subjects brought matters into view which the friends of union ought to have kept out of sight. These circumstances, together with the extensive population of the Eastern States, and their adventurous spirit of commerce, suggested to some bold spirits, that not only British taxation, but British navigation laws, were unfriendly to the interests of America.

What, more than anything else, had prevented a speedier realization of the inherent injustice of the metes and bounds set up by Parliament to limit the trade and industry of the colonies, was that mental habit which makes anything which has long existed seem appropriate and necessary. Edmund Burke, in his famous speech in the House of Commons on "American Taxation," April 19, 1774, laid much stress on this point, saying:

Sir, they who are friends to the schemes of American revenue say that the commercial restraint is full as hard a law for America

to live under. I think so, too. I think it, if uncompensated, to be a condition of as rigorous servitude as men can be subject to. But America bore it from the fundamental Act of Navigation until 1764. Why? Because men do bear the inevitable constitution of their original nature with all its infirmities. The Act of Navigation attended the colonies from their infancy, grew with their growth, and strengthened with their strength. They were confirmed in obedience, even more by usage than by law. They scarcely had remembered a time when they were not subject to such restraint.

But when the colonies had much increased in population, resources, and importance, and when additional and more stringent requirements, by which the power of self-direction was still further abridged, had sharpened the perceptions which custom had dulled, it began to be discerned that commercial and industrial servitude was no proper mate for civil liberty. The instinctive sense of justice, to be found in every human breast, was shocked and tormented by appreciating what was signified, in the last analysis, by tame obedience to such prohibitions as that which stopped the sale of home-made hats from province to province, or as that which constituted it a nuisance to make or use certain machinery essential to the splitting of iron for the manufacture of wrought nails. Men, who for generations had been accustomed to the atmosphere of political freedom, recoiled at view of the ultimate consequences of an unquestioning submission to such requisitions, even though imposed by the British Parliament—requisitions which could not be satisfied without putting native industry in a strait-jacket, so to speak, for the selfish advantage of the mother country; without acknowledging Great Britain's authority to stint and dwarf the productive forces in her American possessions, solely to

aggrandize her own greatness; and without setting dangerous precedents to encourage more radical encroachments upon colonial rights. In time, these augmenting and multiplying restrictions came to be regarded as gross indignities which ought to be resented by self-respect, and as so many degrading marks of bondage to the parent kingdom. So soon as this conviction had become seated in the brains and hearts of the people, every attempt to enforce the restraints engendered nothing but discontent, disorder, disobedience.

A decisive crisis arrived in this long train of events when, in 1764, George Grenville was made Prime Minister of Great Britain. He found the public treasury drained empty by the vampire appetite of war, and his first care was to devise means to replenish the exhausted coffers. Perceiving the capacity of the Americans to pay a tax, if levied, he turned his attention to a project for obtaining revenue by establishing new duties upon all foreign goods imported into the colonies. These were already submitting to the taxes, in the shape of duties, which the Navigation Act and the Sugar Act imposed; and when this new scheme was proposed to Parliament, the people were at once aroused to a sense of their danger; they saw clearly the design of the British Ministry to impose tax upon tax, as long as forbearance would permit the wrong. Action on the subject was taken in the colonial assemblies, where one sentiment prevailed—a denial of the right claimed by Great Britain to tax her colonies without their consent. The fundamental principle of a free government, that "taxation and equitable representation are inseparable," was boldly proclaimed, and petitions and remonstrances from the colonies were transmitted to the King

and Parliament. But the King, instead of heeding these appeals, reasserted in his speech from the throne in January, 1765, his right to tax the colonies, and recommended the adoption of Grenville's measures. Emboldened by this emphatic encouragement, the Minister proposed his famous Stamp Act in February, and in March it became a law, receiving the royal signature. This further attempt to raise a revenue in America, which arbitrarily extended the claim of Parliamentary authority so as to levy internal no less than external taxes upon the colonists, fully aroused these unrepresented and victimized British subjects to an appreciation of the startling danger of enslavement by the mother country, and awakened the first notes of universal alarm which led to a general union of the American commonwealths in defense of their imperiled rights, at length resulting in the adoption of the Declaration of Independence.

The ferment which this act immediately produced in America, even months before the date when it was to go into effect, and the violent opposition which it met with from Pitt and other leading minds in Parliament, caused its repeal in March, 1766. But the Repeal Act was accompanied by a Declaratory Act, which contained the germ of other usurpations and oppressions. It affirmed that Parliament had power "*to bind the colonies in all cases whatsoever.*" Thus, by an apparent retraction which deceitfully amounted to a reassertion, was the seminal principle of all the encroachments upon the liberties of the colonies set forth as an inalienable prerogative of the British government.

Out of these circumstances of opposition arose that long controversy between the colonies and the mother

country about the nature and extent of the latter's power over the former, settled only by revolution and independence—a heated controversy which burned into the memories of the American people the signification of certain words and phrases, connected with taxation and commerce, and employed by the framers of the Constitution in formulating the powers of Congress to raise revenue and to protect home industry. An abiding sense of being deeply wronged; a settled conviction that liberty itself was in danger; a strong belief that resistant action was essential to preserve the integrity of menaced rights; a diligent search for adequate means of obtaining redress—these considerations, growing more vital and more urgent with the lapse of every new year, concentrated the rays of intelligence in all America at one focus of patriotic endeavor, and poured the intensity of their combined light upon the great subjects of controversy, until an illumination of knowledge was shed upon whatever had been obscure, or uncertain, or perplexing. In this way, the minds of the people were familiarized with the salient points in dispute, and with the verbiage in which these were stated, so that it became impossible to be mistaken about the meaning of certain words and phrases, when employed in the discussions of the day, or to misinterpret what was intended when the same words and phrases were inserted in the Constitution, to embody the transfer to Congress of particular powers theretofore possessed by the several States. It is not to be supposed that the members of the Federal Convention, in framing a new organic law for the Union, designed to give to some special formulas of expression a signification different from that which they had borne in State papers, in the proceedings of

public assemblies, in newspaper comments, and in private conversation, during a quarter-century of controversy. All the logical probabilities favor the conclusion that these formulas of expression were adopted because they had a definite sense, precisely fixed by legal as well as constant popular use — a sense with which all classes were conversant — and because there was a set purpose to plant that sense in the Constitution by the employment of words and phrases about the meaning of which there could not be a chance for doubt. But this conclusion rests upon a firmer basis than inference alone. James Madison and other eye-witnesses, whose statements cannot be impeached, have explicitly declared that such was the intention of the Federal Convention.

When, in the progress of the widening differences with the mother country, humble entreaty and patient remonstrance had at length been wearied out; when domineering necessity had compelled the colonies to provide for their self-defense by taking a bolder stand; and especially when, from the summit-level of a longer, broader, more enlightened experience, the American people could look back upon custom-sanctioned restrictions which had been accepted as a matter of course, and could plainly see in these restraints nothing but unwarrantable interferences and grievous wrongs, their minds were filled with indignation, resentment, and a purpose to be rid of all such oppressions. Signal examples of these altered feelings, which flamed out more and more intensely on public occasions, as the years rolled on, are presented in the following extracts from Pitkin's "Political and Civil History of the United States of America":

During the summer of this year [1768] the merchants of Massachusetts, Connecticut, and New York again had recourse to a non-importation agreement, particularly with respect to the articles on which duties were imposed. This was done, not only to obtain a repeal of the late revenue act, *but with a view of encouraging manufactures in the colonies.—Vol. I., p. 230.*

On the motion of Samuel Adams, a committee consisting of twenty-one was appointed [November 2, 1772], "to state the rights of the colonies, and of this province in particular, as *men*, as *Christians*, and as *subjects*."

This committee was, also, directed to publish the same to the several towns in the province, and to the *world*, as the sense of the town of Boston on the subject of their rights, with the various infringements and violations thereof. The report made by this committee was accepted on the nineteenth of that month, and six hundred copies circulated through the colony, with a letter from the committee to the other towns, requesting their concurrence. In this report, drawn with great ability, they claimed those natural and inalienable rights of man with which no government could interfere without their consent. As British subjects, they claimed equal rights with their fellow-subjects in England—rights secured to them by the Constitution. The Christian religion, they said, not only sanctioned their views of civil liberty, but in spiritual concerns secured to them all the freedom and self-direction which they and their fathers had long enjoyed. * * * Nor did the framers of this report confine themselves to the more recent violations of colonial rights, but adverted to the more ancient acts of Parliament, *restraining the manufactures of the colonists.* The act prohibiting the erection of slitting mills they declared to be "*an infringement of that right, with which God and nature had invested them, to make use of their skill and industry in procuring the necessaries and conveniences of life.*". The acts also, prohibiting the transportation of wool by water, and for restraining the manufacture of hats, they pronounced *unreasonable* and *grievous.—Vol. I., pages 248 and 249.*

Most of the towns held meetings, appointed committees of correspondence, and passed resolutions, similar to those of Boston, and some of them even in bolder language. The inhabitants of Petersham, as well as Boston, did not confine themselves to the

late violations of their rights, but declared, that Parliament had unrighteously disturbed their trade, denied them the privilege of *setting up and carrying on manufactures*, restricted and prevented their lawful intercourse and commerce with other States and kingdoms, had made laws touching life and limb in derherison of the ancient common law of the land, and, "in these latter times, had robbed and plundered the honest and laborious inhabitants of this extensive continent of their property, by mere force and power, and are now draining the people of the fruits of their toil, by raising a revenue from them, against the natural rights of man, and in open violation of the laws of God." — *Vol. I., page 250.*

Let it be noticed that the narrow and arbitrary bounds which Great Britain had assigned, many years before, to the industrial life of her American provinces, and to which they had become habituated by long and uncomplaining acquiescence, are above characterized as despotic invasions of natural liberty, thus marking a complete reversal of the view formerly held on the same subject. Nothing could more strikingly illustrate the radical change which had taken place in the attitude and the sentiments of the colonists toward the parent realm. A controversy carried on under such feelings of exasperation, by the intelligence no less than the hearts of the great mass of the inhabitants, from New Hampshire to Georgia, in terms of burning resentment, and with a deep-seated conviction of being engaged in a righteous cause, could not have failed to leave upon the minds of the people a sharply-defined impress of its principal topics, including particular forms of phraseology which had served as moulds to give shape to particular ideas about revenue and commerce.

It was this excessive bitterness of experience which led the colonists to look upon the whole system of

commercial restriction as inherently pernicious; as an aggrandizing device of the intensest, greediest, cruelest, most unscrupulous selfishness; as a means of benefiting one country by deliberately and perforce sacrificing other countries; and as an efficient arm of tyranny. Hence, when these colonies had gained their political independence, they naturally turned with a decided preference to the opposite extreme, or to a commerce unfettered by legal restraints, except so far as might be unavoidable to supply the needs of revenue. This test experiment with free trade, in connection with their previous experience, enabled the American people to acquire a practical knowledge of both systems, and understandingly to weigh the benefits and the disadvantages, the merits and the demerits, of both sides of the commercial problem. Then they discerned, for the first time, that, as it had been necessary to have a resistant policy, in order to counteract the encroachment of Great Britain upon their political rights, so it would be essential to have an equivalent policy, in order to ward off her aggressions upon their industrial and maritime interests. It was in this way that they learned to distinguish between the good and the bad in the scheme of prohibitions and restrictions under which their foreign commerce and their home industry had suffered at the hands of the unnatural mother country. When it became urgently requisite to adopt measures suitable to develop their native resources, to shield their productive enterprise against destructive assault from abroad, and to resuscitate their shipping industry, they found the needful means in the underlying principle of the very British system which they had so strongly, so unreservedly condemned — the principle of

national self-protection. After the manner of love degenerated into lust, that principle, excellent and desirable in its genuine form, had lost in that perverted system its noble character and its true utility, by being made tributary to a rapacious appetite for dominion, and by being subjected to the groveling impulses of an intense selfishness. But the same principle was rendered capable of executing good purposes, so soon as it was divested of its spurious quality as an aggressive force, and restored to its original nature of self-defense—changed from an agency with functions to tear many countries down for supplying wherewith to build one country up, and converted into an instrument of resistance to that very cannibalism of international commerce—purified of its base elements, and brought into cognate relations with the equitable aims and objects of republican institutions. In this restored, in this purified sense, the protecting power was incorporated in the present Constitution of the United States. Thus the stone at first rejected by the builders became at last the chief corner of our political structure.

CHAPTER XI.

NATURE AND EXTENT OF THE PROTECTING POWER—CONTINUED.

The radical difference between "duties for revenue" and "duties for the regulation of commerce" was fully understood and universally admitted, in both Great Britain and the colonies, previous to and during the Revolutionary war. Revenue duties were regarded as taxation, pure and simple; commercial regulations, as a system of limitations and restraints on foreign and colonial intercourse and traffic, with design to secure all the advantages and benefits of the colonial trade to the parent kingdom. Sometimes it was difficult, as several occasions showed, to draw with exactness the line of separation between the two different objects of revenue and regulation—to determine with certainty whether a particular duty was imposed as a tax, or merely as a regulation of trade—because revenue might result unavoidably when duties, instead of prohibitions and other forms of restriction, were employed to give effect to the commercial policy; but it never was claimed by anybody that the power to regulate commerce could be legitimately exercised with *purpose* of raising a revenue. Such a purpose was alien to the whole system of trade laws, notwithstanding that some revenue might incidentally or casually arise from their practical operation; just as the paramount object of fines is to deter persons from violating certain statutory provisions, or from committing other offenses, as contempt of court, yet some revenue is inevitable when a fine is levied and

paid; or just as the end regarded in using a chopping-axe may be to fell a tree, not to obtain the flow of sap, the latter being nothing more than a fortuitous happening extraneous to the result aimed at. This view of the subject was accepted, in those early days, by all classes of minds on both sides of the Atlantic, as definitively settled by long established usage. It is true, many British legislators long held that the right to impose duties for the regulation of commerce necessarily involved the right to impose duties for raising a revenue—that these rights rested upon the same constitutional basis, and thus were one and inseparable in principle—but it was not held that the exercise of both rights looked to the same object; on the contrary, it was freely admitted that they looked to entirely different objects. Indeed, near the close of the Revolutionary war, those who maintained the identity of the two rights in authority formally recognized the difference of object, and offered, for the sake of peace and restored allegiance, that the British government would relinquish all claim to the right which was hateful to the insurgent colonies.

Benjamin Franklin, in his famous examination before the House of Commons, in 1766, recognized, in the most direct and explicit language, the distinction above stated. Question and answer were as follows:

Q.—What will be the opinions of the Americans on those resolutions? [asserting the right of Great Britain to tax America.]

A.—They will think them unconstitutional and unjust.

Q.—Was it an opinion in America, before 1763, that the Parliament had no right to lay taxes and duties there?

A.—I never heard any objections to the right of *laying duties to regulate commerce*, but a right to lay internal taxes was never thought to be in Parliament.

Q.—On what do you found your opinion, that the people of America make any such distinction?

A.—I know that whenever the subject has occurred in conversation, it has appeared the opinion of every one, that we could not be taxed by a Parliament where we were not represented. But the payment of *duties, laid as regulations of commerce*, was never disputed.

Q.—Can you name any act of assembly, or public act, making such distinction?

A.—I do not know that there was any. There was never an occasion to make any such, till now you have attempted to tax us. *That* has occasioned the distinction in which I think *every* assembly on the continent, and *every* member in *every* assembly has been *unanimous*.

Only a few days after Franklin's testimony, or on January 14, 1766, Lord Chatham, in his celebrated speech in the House of Commons on the "Right of Taxing America," pointed out the same distinction, saying:

If the gentleman does not understand the difference between external and internal taxes, I cannot help it. There is a plain distinction between taxes levied for the purposes of raising a revenue, and *duties imposed for the regulation of trade*, for the accommodation of the subject; although, in the consequences, some revenue may incidentally arise from the latter.

He further said on the same occasion:

The Commons of America, represented in their several assemblies, have ever been in possession of this, their constitutional right of giving and granting their own money. They would have been slaves if they had not enjoyed it! At the same time, this kingdom, as the supreme governing and legislative power, has always bound the colonies by her laws, by her regulations and restrictions in trade, in navigation, in manufactures, in everything, except that of taking their money out of their pockets without their consent.

And again:

Upon the whole, I will beg leave to tell the House what is my

opinion. It is, that the Stamp Act be repealed absolutely, totally, and immediately. That the reason for the repeal be assigned, viz., because it was founded on an erroneous principle. At the same time, let the sovereign authority of this country over the colonies be asserted in as strong terms as can be devised, and be made to extend to every point of legislation whatsoever; that we may bind their trade, confine their manufactures, and exercise every power whatsoever, except that of taking their money out of their pockets without their consent.

The last two extracts from this speech exhibit, in new forms of contrast, the unlike qualities of taxation and regulation, as set forth in the first extract; for Lord Chatham declared, in the course of his argument: "It is my opinion that this kingdom has no right to lay a tax on the colonies"; hence, according to his view, the right of Great Britain to bind, by prohibitions and restraints, the trade, the navigation, and the manufactures of America, was distinct and apart from the claimed right to tax America—in other words, regulation would cease to be regulation, and be transformed into taxation, on making revenue its primary and direct object.

These quoted passages are important as showing that, a full decade before the Declaration of Independence, or almost at the very outset of the great controversy between the mother country and the colonies, the wide difference between "duties imposed for the regulation of trade," and "duties imposed for raising a revenue" was fully understood in England, and unequivocally asserted, in the most deliberate, formal, and public manner, by competent British authority. Moreover, Lord Chatham's speech, being an able, vigorous, and fearless defense of colonial rights, attracted much attention in America, and was peculiarly well adapted

to make the distinctive and precise use of certain phrases by the great English statesman current and general, from New Hampshire to Georgia, had not such use existed already.

In subsequent speeches, he reiterated and emphasized his views on this subject, saying, in the House of Lords, January 20, 1775, on the question of "Removing Troops from Boston," what follows:

> Let this distinction then remain forever ascertained; taxation is theirs, commercial regulation is ours. As an American, I would recognize to England her supreme right of regulating commerce and navigation; as an Englishman by birth and principle, I recognize to the Americans their supreme, unalienable right in their property—a right which they are justified in the defense of to the last extremity

Edmund Burke, who surpassed all his contemporaries in amplitude and subtlety of intellect, and whose fidelity to truth and justice was above reproach, fully agreed with Lord Chatham on this point. In his speech in the House of Commons, April 19, 1774, on "American Taxation," he said:

> Permit me then, sir, to lead your attention very far back—back to the Act of Navigation—the corner-stone of the policy of this country with regard to its colonies. Sir, that policy was, from the beginning, purely commercial; and the commercial system was wholly restrictive. It was the system of a monopoly. No trade was let loose from that constraint, but merely to enable the colonists to dispose of what, in the course of your trade, you could not take; or to enable them to dispose of such articles as are forced upon them, and for which, without some degree of liberty, they could not pay. Hence all your specific and detailed enumerations; hence the innumerable checks and counter checks; hence that infinite variety of paper chains by which you bind together this complicated system of the colonies. This principle of commercial monopoly runs through no less than twenty-nine

acts of Parliament, from the year 1660 to the unfortunate period of 1764.

In all those acts the system of commerce is established, as that from whence alone you proposed to make the colonies contribute (I mean directly and by the operation of your superintending legislative power) to the strength of the empire. I venture to say that, during that whole period, *a parliamentary revenue from thence was never once in contemplation.* Accordingly, in all the number of laws passed with regard to the plantations, *the words which distinguish revenue laws, specifically as such, were, I think, premeditatedly avoided.* I do not say, sir, that a form of words alters the nature of the law, or abridges the power of the lawgiver. It certainly does not. However, titles and formal preambles are not always idle words; and the lawyers frequently argue from them. I state these facts to show, not what was your right, but what has been your settled policy. Our revenue laws have usually a *title,* purporting their being *grants;* and the words *give and grant* usually precede the enacting parts. Although duties were imposed on America in acts of King Charles the Second, and in acts of King William, no one title of giving "an aid to his Majesty," or any of the usual titles to revenue acts, was to be found in any of them till 1764; nor were the words "give and grant" in any preamble until the sixth of George the Second. However, the title of this act of George the Second, notwithstanding the words of donation, considers it *merely as a regulation—"an act for the better securing of the trade of his Majesty's sugar colonies in America."* This act was made on a compromise of all, at the express desire of a part of the colonies themselves. It was therefore in some measure with their consent; and having a title directly purporting only a *commercial regulation,* and being in truth nothing more, the words were passed by, at a time when no jealousy was entertained and things were little scrutinized. Even Governor Bernard, in his second printed letter, dated in 1763, gives it as his opinion, that, "it was an act of *prohibition,* not of revenue." This is certainly true, that no act avowedly for the purpose of revenue, and with the ordinary title and recital taken together, is found in the statute book until the year I have mentioned, that is, the year 1764. *All before this period stood on commercial regulation and restraint.* The scheme of a colony revenue by British authority

appeared, therefore, to the Americans in the light of a great innovation; the words of Governor Bernard's ninth letter, written in November, 1765, states this idea very strongly; "it must," says he, "have been supposed such *an innovation* as a parliamentary taxation would cause a great alarm, and meet with much opposition in most parts of America. It was quite *new* to the people, and had no *visible bounds* set to it." After stating the weakness of government there, he says, "Was this a time to introduce so great a novelty as a parliamentary inland taxation in America?" Whatever the right might have been, this mode of using it was absolutely new in policy and practice.

In a subsequent part of his speech, Mr. Burke traced this departure from long usage up to its actuating motives and impelling circumstances:

Whether you were right or wrong in establishing the colonies on the principles of commercial monopoly, rather than on that of revenue, is at this day a problem of mere speculation. You cannot have both by the same authority. To join together the restraints of a universal internal and external monopoly, with a universal internal and external taxation, is an unnatural union—perfect uncompensated slavery. You have long since decided for yourself and them; and you and they have prospered exceedingly under that decision.

This nation, sir, never thought of departing from that choice until the period immediately on the close of the last war. Then a scheme of government new in many things seemed to have been adopted. I saw, or thought I saw, several symptoms of a great change, while I sat in your gallery, a good while before I had the honor of a seat in this House. At that period the necessity was established of keeping up no less than twenty new regiments, with twenty colonels capable of seats in this House. This scheme was adopted with very general applause from all sides, at the very time that, by your conquests in America, your danger from foreign attempts in that part of the world was much lessened, or, indeed, rather quite over. When this huge increase of military establishment was resolved on, a revenue was to be found to support so great a burden. Country gentlemen, the great patrons of

economy, and the great resisters of a standing armed force, would not have entered with much alacrity into the vote for so large and expensive an army, if they had been very sure that they were to continue to pay for it. But hopes of another kind were held out to them; and, in particular, I well remember that Mr. Townsend, in a brilliant harangue on this subject, did dazzle them by playing before their eyes the image of a revenue to be raised in America.

Here began to dawn the first glimmerings of this new colony system. It appeared more distinctly afterward, when it was devolved upon a person [Mr. Grenville], to whom, on other accounts, this country owes very great obligations. I do believe that he had a very serious desire to benefit the public. But with no small study of the detail, he did not seem to have his view, at least equally, carried to the total circuit of our affairs. He generally considered his objects in lights that were rather too detached. Whether the business of an American revenue was imposed upon him altogether; whether it was entirely the result of his own speculation; or, what is more probable, that his own ideas rather coincided with the instructions he had received, certain it is, that, with the best intentions in the world, he first brought this fatal scheme into form, and established it by act of Parliament.

About eleven months afterward, in his speech in the House of Commons, March 22, 1775, on "Conciliation with America," Mr. Burke again laid much stress on this distinction between commercial regulations and revenue laws. He said:

But I cannot agree with the noble lord, nor with the pamphlet from whence he seems to have borrowed these ideas, concerning the inutility of the trade laws; for, without idolizing them, I am sure they are still, in many ways, of great use to us; and, in former times, they have been of the greatest. They do confine, and they do greatly narrow, the market for the Americans; but my perfect conviction of this does not help me in the least to discern how the revenue laws form any security whatever to the commercial regulations, or that these commercial regulations are the true ground of the quarrel, or that the giving way in any one instance of authority is to lose all that may remain unconceded.

One fact is clear and indisputable. The public and avowed origin of this quarrel was on taxation. This quarrel has indeed brought on new disputes on new questions, but certainly the least bitter, and the fewest of all, on the trade laws. To judge which of the two be the real radical cause of quarrel, we have to see whether the commercial dispute did, in order of time, precede the dispute on taxation. There is not a shadow of evidence of it. Next, to enable us to judge whether at this moment a dislike to the trade laws be the real cause of quarrel, it is absolutely necessary to put the taxes out of the question by a repeal.

The celebrated preamble to the Act of Navigation itself—first of the long procession of acts which fostered and expanded the British colonial system—clearly shows, as copied below, that, at the very outset, revenue formed no part of the object in regulating trade for the advantage of the mother country:

In regard his Majesty's plantations beyond the seas are inhabited and peopled by his subjects of this his kingdom of *England, for the maintaining a greater correspondence and kindness between them*, and keeping them in a firmer dependence upon it, and rendering them yet more beneficial and advantageous to it *in further employment and increase of English shipping* and seamen, vent of *English woolens*, and other manufactures and commodities, *rendering the navigation to and from the same more safe and cheap*, and making this kingdom *a staple*, not only of the commodities of those plantations, but also of the commodities of other countries and places, *for the supplying of them;* and it being the *usage* of other nations to keep plantations trade to themselves, etc.

All the other acts belonging to the same general class bear ample testimony to the same spirit and intent. A strong example of this is to be found in the twenty-fifth of Charles the Second, chapter 7, made expressly "*for the better securing of the plantation trade*," which laid duties on certain commodities exported from one colony to another, and specified its object to be as follows:

Whereas, by one act passed in the twelfth year of your Majesty's reign, intituled "An act for *encouragement of shipping and navigation*," and by several other laws, passed since that time, it is permitted to ship, etc., sugars, tobacco, etc., of the growth, etc., of any of your Majesty's plantations *in America*, etc., from the places of their growth, etc., to any other of your Majesty's plantations in those parts, etc., and that *without paying custom for the same*, either at the lading or unlading the said commodities, by means whereof the trade and navigation in those commodities, from one plantation to another, is greatly increased, and the inhabitants of divers of those colonies, *not contenting themselves with being supplied with* those *commodities for their own use, free of all customs* (while the subjects of this, your kingdom of *England*, have paid great customs and impositions for what of them have been spent here), *but, contrary to the express letter of the aforesaid laws, have brought into divers parts of Europe* great quantities thereof, and do also vend great quantities thereof to the shipping of other nations, who bring them into divers parts of *Europe*, to the great hurt and diminution of your Majesty's customs, and of the *trade* and *navigation* of this, your kingdom; FOR THE PREVENTION THEREOF, etc.

The seventh and eighth of William the Third, chapter 22, entitled "An act for preventing frauds, and regulating abuses in the plantation trade," recites that—

Notwithstanding divers acts, etc., great abuses are daily committed, *to the prejudice of the English navigation, and the loss of a great part of the plantation trade to this kingdom*, by the *artifice* and *cunning* of ill-disposed persons; for REMEDY WHEREOF, etc. And whereas, in some of his Majesty's *American* plantations, a doubt or misconstruction has arisen upon the before-mentioned act, made in the twenty-fifth year of the reign of King Charles II., whereby certain duties are laid upon the commodities therein enumerated (which by law may be transplanted from one plantation to another, for the supply of each other's wants) as if the same were, by the payment of those duties in one plantation, discharged from giving the securities intended by the aforesaid acts, made in the twelfth, twenty-second, and twenty-third years of the

reign of King Charles II., and consequently be at liberty to go to any foreign market in *Europe*, etc.

The sixth of George the Second, chapter 13, which imposes duties on foreign rum, sugar, and molasses, imported into the colonies, states the reasons thus:

Whereas, the welfare and prosperity of your Majesty's sugar colonies *in America* are of the greatest consequence and importance to the *trade, navigation*, and *strength* of *this kingdom;* and whereas, the planters of the said sugar colonies have of late years *fallen into such discouragements*, that they are unable to improve or carry on the sugar trade *upon an equal footing with the foreign sugar colonies, without some advantage and relief given to them from Great Britain:* FOR REMEDY WHEREOF, AND FOR THE GOOD AND WELFARE OF YOUR MAJESTY'S SUBJECTS, etc.

It is not necessary to add any argumentative comments to these extracts, in order to prove that the statutes were all intended *solely as regulations of commerce.* That object is plainly wrought into the very texture of the quoted passages. Throughout the entire web and woof of the policy of these trade laws not a thread of purpose to raise a revenue can be discerned. But all this was radically changed when Parliament passed the first American revenue act—the act in 1764, imposing the port duties—with the significant preamble partly given below:

And whereas, it is just and necessary that A REVENUE BE RAISED IN YOUR MAJESTY'S SAID DOMINIONS IN AMERICA, *for defraying the expenses of defending, protecting, and securing the same;* we, your Majesty's most dutiful and loyal subjects, THE COMMONS OF GREAT BRITAIN, in Parliament assembled, being desirous to make some provision, in this present session of Parliament, TOWARD RAISING THE SAID REVENUE IN AMERICA, have resolved to GIVE and GRANT unto your Majesty the several rates and duties hereinafter mentioned, etc.

This act encountered prompt and energetic opposition in the colonies, where it was contested on the ground of right. The House of Burgesses in Virginia sent an address to the House of Lords and a remonstrance to the House of Commons, arguing against British authority to make such a law. Remonstrances were likewise sent from Massachusetts and New York to the Privy Council. Here were the actual beginnings of that mighty controversy which ended in revolution and independence. Early in the spring of 1765 followed the odious Stamp Act, which was too gross and palpable a departure from old courses to deceive the meanest capacity, and which kindled the rising blaze of discontent into a conflagration of resentment. This act opened with the following recital:

Whereas, by an act made in the last session of Parliament, *several duties were granted, continued, and appropriated toward defraying the expenses of defending, protecting, and securing the British colonies and plantations in America:* and whereas, it is first necessary that provision be made FOR RAISING A FURTHER REVENUE WITHIN YOUR MAJESTY'S DOMINIONS IN AMERICA, toward defraying the said expenses, we, your Majesty's most dutiful and loyal subjects, THE COMMONS OF GREAT BRITAIN, in Parliament assembled, have therefore resolved to GIVE and GRANT unto your Majesty the several rates and duties hereinafter mentioned, etc.

In 1767, notwithstanding it had become necessary to concede to the colonies the repeal of the Stamp Act, after a brief and ineffectual effort to execute its provisions, another tax was imposed in the shape of duties on glass, paper, painters' colors, and tea. The preamble to this third measure was as follows:

Whereas, it is expedient THAT A REVENUE SHOULD BE RAISED IN YOUR MAJESTY'S DOMINIONS IN AMERICA, *for making a more certain and adequate provision for defraying the charge of the admin-*

istration of justice, and the support of civil government in such provinces, where it shall be found necessary; and toward the further defraying the expenses of defending, protecting, and securing the said dominions, THE COMMONS OF GREAT BRITAIN, in Parliament assembled, have therefore resolved to GIVE and GRANT unto your Majesty the several rates and duties hereinafter mentioned, etc.

Here, in these three acts, may be observed an authority expressly claimed and exerted to impose duties on the colonies without their consent; not for the regulation of trade; not for the preservation or promotion of a mutually beneficial intercourse between the several constituent parts of the British empire, theretofore the sole objects of parliamentary limitations of commerce; *but for the single purpose of obtaining a revenue from America.* This fundamental and signal change in the British policy proved to be the summons to protracted discussion on both sides of the Atlantic—in Parliament, in the colonial assemblies, in the newspapers, in pamphlets, and in the fireside exchange of opinions. The degree of authority which might rightfully be exercised by the mother country over the colonies had never been accurately defined. But the controversy to which these revenue laws gave birth soon greatly enlarged the extent of political information in America, and, while rendering more diffusive among the colonists a knowledge of their rights, inspired a much more accurate mode of thinking, speaking, and writing on the subject. It was in the course of the disputes on the pending questions that the wide difference between duties for regulation and duties for revenue, with the special formulas of words to designate that difference, became indelibly impressed upon the memories of the whole American people. For a

number of years there was no lack of printed as well as spoken argument to keep alive the distinction in the popular mind. Among the most influential publications of this kind was the series of letters from the pen of John Dickinson, a farmer in Pennsylvania, reprinted in London in 1768, and frequently referred to by historians. Below is a pointed extract from the second of these letters:

The Parliament unquestionably possesses a legal authority to *regulate* the trade of *Great Brtiain and all her colonies.* Such an authority is essential to the relation between a mother country and her colonies, and necessary for the common good of all. He who considers these provinces as States distinct from the *British empire* has very slender notions of *justice* or their *interests.* We are but parts of a *whole,* and therefore there must exist a power somewhere to preside and preserve the connection in due order. This power is lodged in the Parliament, and we are as much dependent on *Great Britain* as a perfectly free people can be on another.

I have looked over every statute relating to these colonies from their first settlement to this time, and I find every one of them founded on this principle, till the *stamp-act* administration. *All before* are calculated to *regulate trade,* and preserve or promote a mutually beneficial intercourse between the several constituent parts of the empire; and though many of them *imposed duties* on trade, yet those duties were always imposed *with design* to restrain the commerce of one part, that was injurious to another, and thus to promote the general welfare. *The raising a revenue thereby was never intended.* Thus the king, by his judges in his courts of justice, imposes fines, which altogether amount to a very considerable sum, and contribute to the support of government; but this is merely a consequence arising from restrictions that only meant to keep peace and prevent confusion; and surely a man would argue very loosely who should conclude from hence that the king has a right to levy money in general upon his subjects. Never did the *British* Parliament, till the period above mentioned, think of imposing duties in *America,* FOR THE PURPOSE OF RAISING A REVENUE.

Among the earliest proceedings of the memorable Congress of Independence, as recorded in its journals, October 14, 1774, is the unanimous declaration and resolve, claiming for the colonies that—

> They are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed; but, from the necessity of the case, and a regard to the mutual interest of both countries, *we cheerfully consent* to the operation of such acts of the British Parliament as are *bona fide* restrained *to the regulation of our external commerce*, for the *purpose of securing* the COMMERCIAL ADVANTAGES of the whole empire to the mother country, and the commercial benefits of its respective members, *excluding every idea of taxation*, external or internal, *for raising a revenue on the subjects in America without their consent.*

At length the stress of circumstances compelled Great Britain herself to formally admit the legitimacy of the position taken by the Continental Congress. The surrender of Burgoyne's entire army to the American forces at Saratoga, in October, 1777, had removed every flattering hope of conquest with which the British cabinet and nation had so long been deluded, and suddenly exhibited in open view the mass of resistance which must yet be encountered. Soon a desire to restore peace on any terms, short of the dismemberment of the empire, found its way into the ranks of the ministry. In 1788, Lord North, aroused to the realities of his situation, and seeking to win the insurgent colonies from independence and from alliance with France, procured the passage of a bill which offered a compromise upon the precise basis for which they had long contended. This measure of conciliation had the sig-

nificant title which follows: "A bill *for removing all doubts and apprehensions concerning* TAXATION *by the Parliament of Great Britain in any of the colonies and plantations of North America.*" The body of the bill contained an offer of unconditional surrender of the original ground of controversy, in these words: "It is expedient to declare that the King and Parliament of Great Britain *will not impose any duty or tax* FOR THE PURPOSE OF RAISING A REVENUE IN THE COLONIES, *except only such duties as may be expedient to impose* FOR THE REGULATION OF COMMERCE." But this tardy attempt at pacification came too late. The quarrel had drifted far from its starting-point, while a system of insults and injuries had planted almost inextinguishable hatred in the colonial bosom, where the warmest friendship had so long been cultivated.

In the many historical records quoted in this chapter, a safe, undoubtable foundation, massive and solid, is furnished for the support of the propositions which constitute the superstructure, to wit: That it was well understood in both Great Britain and America, previous to and during the Revolutionary war, that duties for *regulation* of commerce never *aimed* at *revenue*, although some revenue might incidentally result therefrom; and that duties for *revenue* never *aimed* at *regulation* in any case whatsoever, even though some regulation might be the unavoidable consequence. This wide separation of intent was kept up and fully comprehended, as will be shown, down to the formation of the Constitution, when the power "to regulate commerce with foreign nations" was granted to Congress in the sense of authority to impose duties on imports for the advantage of home interests, and in the very words

which had been used in colonial times to denote that object; this, too, be it remembered, *in addition to the grant of the revenue power*, or "power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States." Indeed, it is peculiarly remarkable, as related to latter-day controversy on the subject, that the colonists utterly refused to submit to the British *duties for revenue*—that is, *to a tariff for revenue only*—but yielded without question to the British *duties for regulation of trade*—that is, *to a tariff for protection only*. Is it logically supposable that the free and independent States, which had been oppressed colonies, had any design, when constructing a new framework of government for themselves, to limit the tariff-making power of Congress solely to an object which had been odious and intolerable during their time of colonial vassalage, and which had been regarded as such a vital encroachment upon civil liberty as to justify the resistance of war? Yet this unnatural and absurd assumption is exactly what must be claimed and defended by all those who maintain that the Constitution does not authorize the imposition of duties on imports for the purpose of protection.

CHAPTER XII.

NATURE AND EXTENT OF THE PROTECTING POWER—CONTINUED.

When, under the Confederation, the enlightened friends of national unity had been thoroughly alarmed by the growing tendency to disorder, violence, and disintegration; and when the best intellects in the country were discussing plans to prevent the threatened plunge into anarchy, one of the means suggested—the one most frequently advocated in the pamphlet and newspaper literature of the day—was to confer upon Congress the power to regulate commerce with foreign nations. The same colonial, controversial, and technical use of phraseology to express this power, which had long been familiar to the people, was employed in those discussions; hence, everybody understood that the proposed grant of authority signified something very different from authority to raise revenue, and included, as one of its commonest exemplifications and exertions, authority to make what nowadays is known as a protective tariff. After the Revolution and before the Constitution, all impositions of duties on imports, by any of the States, for the purpose of shielding and cherishing home interests, were called commercial regulations by our writers and speakers, and universally considered to be a legitimate as well as a customary exercise of the power to regulate commerce. When that precise form of speech was incorporated in the Constitution, did it not mean exactly the same thing as always before it had meant? Would it not have been exceedingly strange—

extraordinary almost beyond belief, and requiring the support of the very strongest evidence to make it credible—if the signification of a certain formula of words, established by many years of documentary, legislative, diplomatic, controversial, and popular usage, had been suddenly and radically changed, without due notice, until every trace of its former meaning was taken away, so soon as the verbiage was introduced into the organic law of the nation, for the purpose of granting and defining a particular power of government? This extreme of unlikelihood represents, nevertheless, the logical predicament of those who deny that the power to regulate commerce with foreign nations embraces the power to protect home industry by import duties which neglect revenue.

Rufus Choate so thoroughly investigated, and has so exhaustively treated, this part of the subject, that his exposition of it, as given in his speech in the Senate of the United States, March 14, 1842, on "The Power and Duty of Congress to continue the Policy of Protecting American Labor," is copied below in full:

To put this matter at rest, let me ask you to look a little more at large into that considerable body of writings which appeared in the States, between the peace of 1783 and the adoption of the Constitution, upon the subject of a new Constitution. A word first on their general character.

You know how soon after the war an opinion began to prevail that the country needed a stronger government. Suggested at first, like the Revolution itself, by the *intelligence* of the community, it spread fast and far; the events of every day gave it diffusion and strength; it possessed itself at last of the general mind, and the Constitution was the result. During the progress of this opinion, it produced a great deal of discussion. These writings, into which I wish you now to look, are the fruits of that discus-

sion, and embody its topics and its language. Less known than the more lofty and classical controversial literature of the more glorious revolutionary and ante-revolutionary time, they are to us the most interesting and most instructive writings in the world. No man, I could almost say, can understand the Constitution without the study of them. No man can understand the nature of the new remedial law until he has meditated the disease which it was made to cure, in these vivid pictures of it. No man can understand the vocabulary of the Constitution until he has familiarized himself in these writings, with the current vocabulary of the people, by whom and for whom it was composed. The defects of the old Confederation; its utter insufficiency for our greatness and our glory; the evils which bore the people to the earth, and made their newly-acquired independence a dreary and useless thing; the disordered condition of the currency; our exhausting system of trade; the action of conflicting and inadequate commercial regulations of the States; the excessive importations of foreign manufactures; the drain of specie; the stagnation of labor, oppressed and disheartened by a competition with all the pauper labor of all the world; the depression of agriculture, sympathizing with other labor by an eternal law; the need of a system of divided and diversified employments, which should leave no one overcrowded, should leave no man's faculties undeveloped and unexcited; which should give a market and a reward to all industry; the wants, sufferings, fears, wishes; the universal stimulation of mind and fermentation of opinions in which the Constitution had its birth; you will find them all there, and you will find them nowhere else.

Looking with some labor into a collection of part of these writings in the American Museum—a work embodying the general spirit of the press from 1783 to 1787—I think I find conclusive evidence of this fact, to wit: that a confident and sagacious and salutary conviction came to be generally adopted: 1. That one capital source of the evils which oppressed us was the importation of too many foreign manufactures, and the use of too few domestic manufactures—too much encouragement of the foreign laborer, and too little encouragement of our own; 2. That a new and more perfect union and a stronger government were required, among other ends, very much for the cure and prevention of this precise evil; and, 3. That, in order to effect this end, the new

government must be clothed with this *specific power of regulating trade, whereby it could check the import of foreign manufactures*, by duties and prohibitions, and thus bring to life and keep alive domestic manufactures, and with them the entire labor of America. If this is so, it will prove at once, *first*, that this language retained the same signification in 1787 which it had borne in 1764; and, *next*, that it means in the Constitution just what it meant everywhere else, and was inserted there *because* it bore that meaning. Let me ask your attention, then, to some evidence and illustrations of the fact, to which I might add a thousand.

In the first volume of the collection I have referred to is an article on American manufactures. It is continued through three months of the Museum, and was written in Maryland at some time after 1783, and before 1787. The proposition which the essayist maintains is, that manufactures ought immediately to be established in the United States. In support of this, he reasons forcibly and zealously, and with much maturity and breadth of view, considering the time when he wrote; presents a vivid exhibition of the uses of manufactures and of manufacturing industry; of the rank they hold in all civilized States; of the division of labor which they render practicable, and the influence of that division in stimulating all the faculties of men and nations; and in supplying to each faculty and each mind its favorite employment and adequate reward; and, above all, he urges the actual evils which were weighing the country down; its foreign debt; its ruinous consumption; its expensive tastes; its incomplete development of industry; its deficiency in the means of self-reliance, and self-support, and self-regulation, as a decisive argument for his purpose. He goes on then to inquire how manufactures may be introduced and sustained; and his scheme is, *a government which should have power to regulate trade, and in the exercise of that power should, among other expedients, impose duties on imports of articles coming in competition with the domestic labor.* "I am convinced," he says, page 212, "that to begin at this juncture the establishment of manufactures will be the only way to lay the foundation for the future glory, greatness, and independence of America." "Well, how, then," he asks, "shall we make the beginning?" "Free trade," he argues, "in our situation, adopting the sentiment of Montesquieu, 'must necessarily lead us to

poverty.'" "A State whose balance of trade is always to its disadvantage cannot grow rich." We must have regulated trade, then. "But, we are told by some," he proceeds, "that trade will regulate itself." Hear how he combats this proposition, and what is the precise *regulation of trade* which he urges upon the statesmen of America:

"If trade will regulate itself, why do the wisest and most prosperous governments make laws in favor and support of their trade? Why does the British Parliament employ so much time and pains in regulating their trade, so as to render its advantages particularly useful to their own nation? Why so preposterous as to abide by and enforce their boasted navigation act? But so far is trade from regulating itself, that it continually needs the help of the legislation of every country, as a nursing father. If we Americans do not choose to regulate it, it will regulate us, till we have not a farthing left in our land. Trade, like a helpless infant, requires parental care, and to be well looked after; for, says the same excellent author: 'A country that constantly exports fewer manufactures or commodities than it receives will soon find the balance sinking; it will receive less and less, till, falling into extreme poverty, it will receive nothing at all.' The truth is, trade regulates or corrects itself just as everything else does that is left to itself. The manner the late war, for instance, would have corrected itself, had we supinely sat still and folded our arms together, would have been such a correction as I hope no person who makes use of this flimsy argument would wish to have taken place; *and unless we shortly regulate and correct the abuses of our trade by lopping off its useless branches and establishing manufactures*, we shall be corrected, perhaps, even to our very destruction."

"The mechanics," he continues, "hope the Legislature will afford them that protection they are entitled to; for, as the present baleful *system of trade* and scarcity of cash occasion numbers of them to want employment, though they are able and ready to furnish many articles which are at present imported, and as many of their branches are fast declining, and some are likely to become totally extinct, they conceive *that duties ought to be laid on certain imported articles in such a manner as to place the American manufacturers on the same footing as the manufacturers of Europe*, and enable them to procure bread and support for their families." And then, in further explanation, he adds: "An excessive duty might be only an encouragement to the smuggler; on the other hand, let them be only so high as to enable the manufacturer to procure a decent subsistence for his family."

Mark two things in this argument and these extracts: *the advice to encourage domestic manufacture* by duties on foreign manufacture, *and the use of language* which calls such an impost, for such an object, *a regulation of trade.*

I should never have done, sir, if I attempted to read all the proofs which I find in these papers, that the importance of establishing American manufactures seems, even then, to have been generally apprehended; and that a powerful and an immediate impulse was expected to be given to them, in some way, by the new Constitution. The concurrence of opinion upon that point is marvelous. It is still more marvelous, the maturity of the public judgment upon the nature and uses of manufacturing industry, and the very considerable extent to which that industry already had taken root, when you consider with what severity the austere and long dominion of England had pressed upon it; and how short and how unpropitious the time had been for the arts of peace to grow after that dominion had passed away. But I must confine myself closely to selections which illustrate the meaning and objects of the constitutional phraseology. Let me, however, read a passage or two from a series of letters, by a North Carolinian, under the signature of Sylvius. I find them in the second volume of the Museum, page 107, and they appeared in August, 1787. His cure, too, for the oppressive indebtment, depreciated currency, scarcity of money, exhausting importations, and what he calls luxurious appetites of the day, is the encouragement of American manufactures, and the substitution of a tax on imported manufactures for all other modes of taxation.

"The more I consider [says he, page 108] the progress of credit and the increase of wealth in foreign nations, the more fully I am convinced that paper money must prove hurtful to this country; that we cannot be relieved from our debts except by promoting domestic manufactures; and that during the prevailing scarcity of money the burdens of the poor may be relieved by altering the mode of taxation."

Addressing himself to the second of these propositions, he adverts to the appalling enlargement of the foreign debt since the peace; to the fact that it has been contracted for clothing; clothing for the master; clothing for the slave; furniture; "saws, hammers, hoes, and axes, as if," says he, "the wolf had made war against our iron as well as our sheep"; Irish butter and beef, and British ale, porter, and cheese, "as if our country did not produce barley, hops, or black cattle"; hazel and oak sprouts under the name of "walking sticks"; luxuries of all denominations, swelling it in three years to six millions of dollars; and then exclaims:

"Let us turn our attention to manufactures, and the staple of our country will soon rise to its proper value, for we have already glutted every foreign market. By this expedient, instead of using fictitious paper, we shall soon obtain hard money sufficient; instead of toiling in the field, and becoming poor, that we may enrich the manufacturers of other countries, we shall prosper by our own labor, and enrich our own citizens."—"Every domestic manufacture is cheaper than a foreign one, for this plain reason: by the first, nothing is lost to the country; by the other, the whole value is lost; it is carried away, never to return. It is perfectly indifferent to this State or to the United States, what may be the price of domestic manufactures, because that price remains in the country."

He proceeds then to recommend a substitution of an excise on foreign manufactures sold in the State for other modes of taxation; and, although I do not find here an illustration of the meaning of the words which I am investigating, you will be struck with the confidence with which he presses the grand elementary suggestion of a tax on foreign labor for the encouragement of home labor.

"All wise governments [such is his argument, page 124] have thought it their duty, on special occasions, to offer bounties for the encouragement of domestic manufactures; but an excise on foreign goods must operate as a bounty."—"I have said that an excise is more favorable to the poor than a land or poll tax. I will venture an additional sentiment; there never was a government in which an excise could be of so much use as in the United States of America. In all other countries, taxes are considered as grievances. In the United States, an excise on foreign goods would not be a grievance: like medicine to a sick man, it would give us strength; it would close that wasteful drain by which our honor and our wealth are consumed. What though money was not wanted—though we did not owe a florin to any foreign nation—though we had no domestic debt—and though the expenses of civil government could be supported for many years without a tax, still it may be questioned whether an excise would not be desirable. It would certainly be the best expedient for promoting domestic manufactures; and the condition in which we now live, our general dependence on a foreign country for arms and clothing, is dishonorable—it is extremely dangerous."

"It is the duty of the statesman either to check or to promote the several streams of commerce by taxes or bounties, so as to render them profitable to the nation. Thus it happened in Massachusetts. A tax of twenty-five per cent was lately imposed on nails, and the poor of Taunton were immediately returned to life and vigor."

"If any man has doubts concerning the effect of large taxes on foreign manufactures, he should turn his eyes to the Eastern States.

The mechanic is generally the first who perceives the effects of a pernicious commerce; for the support of his family depends on his daily labor."—"Hence it is that the merchant may be profited by a particular branch of commerce, and may promote it diligently, while his country is sinking into a deadly consumption."

You have heard the early and the mature good sense of North Carolina. Listen to a sentence or two from an essay "on the advantages of trade and commerce," written *at Charleston* in South Carolina, in 1786, and consider what inferences it suggests upon the general subject of the public opinion of that eventful day. It is signed "*American*," and breathes the very spirit of commercial, political, and industrial union; of union for defense against the arts as well as the arms of the world. "There are but two ways to national wealth [he begins], conquest and the encouraging of agriculture, manufactures, and commerce." This he illustrates historically. England at first was poor; "but as soon as the spirit of manufacturing raised its head, *and commerce was regulated by good laws*" [is it not palpable that he means the protecting tariff, behind which that intellectual industry has so splendidly developed itself?], "they rose superior to every obstacle." (American Museum, 2d Vol., pages 328 and 329.)

"It is in vain [he continues, page 330] for any people to attempt to be rich, or have a sufficient circulating specie among them, whose imports exceed their exports; the hand of the manufacturer in a distant land seems to act on gold and silver as the loadstone does on the needle."

Again, after adverting to a revenue of three millions and a half raised by England, and by monopolizing our trade, he proceeds (page 331):

"A great part of this may be saved to these States by our becoming our own merchants and carriers; and a great part of the remaining sum may be saved in a few years by *encouraging* our own manufactors; and even this encouragement will be of service to our revenues—I mean laying a duty on our imports, and giving a small part in bounties to our own tradesmen."

By tradesmen he means mechanics. And to the suggestion to turn planters into manufacturers, he answers:

"I by no means wish it. I only wish to encourage European tradesmen to come to reside here. I wish to see as much as possible exported, and as little imported. The planters that buy the manufactures of America

stop so much money in this country, which must return again to the planters' hands as long as traders eat."

Duties of encouragement, let me observe in passing, he calls "restrictions on the British trade." Sir, the name of the writer of this paper is unknown to me. And yet, when I compare the spirit, the sagacity, the American feeling which mark his matter with the language and the policy of later days, and more famous names, I can hardly forbear to exclaim of his humble and forgotten speculation—

"That strain I heard was of an higher mood."

I must hurry away from the accumulations of proof before me, which bear on the general subject; the formation of associations to encourage manufactures, the resolutions of the patriotic society of Richmond, of the ladies of Halifax in North Carolina, and of Hartford in Connecticut, and of the Legislature and Executive of Massachusetts, to effect this by individual and organized exertion, and all the other indications which break from the universal press of that stirring and anxious time, and which show you with how true an instinct the genius of America was turning itself to take hold on the golden key that opens the palace of national wealth and greatness—I must hurry from these to call your attention to some others more immediately applicable to the proposition which I am maintaining. Look, then, for a moment, into an address by a "Jerseyman," in November, 1787, to the citizens of New Jersey, on the new Constitution. Hear him, one of the people, appealing to the people with the open book in his hand, speaking the language of the people—hear him on the clause which you are attempting to interpret:

"The great advantages [American Museum, Vol. II., page 437], which would be the result of the adoption of the proposed Constitution, are almost innumerable. I will mention a few among the many. In the first place, the proper regulation of our commerce would be insured—the imposts on all foreign merchandise imported into America would still effectually aid our continental treasury. This power has been heretofore held back by some States on narrow and mistaken principles. The amount of the duties since the peace would probably, by this time, have nearly paid our national debt. *By the proper regulation of our commerce* our own manufactures would be also much promoted and encouraged. Heavy duties would discourage the consumption of articles of foreign growth. This would induce us

more to work up our raw materials, and prevent European manufacturers from dragging them from us, in order to bestow upon them their own labor and a high price before they are returned into our hands."

Just then, too, a Pennsylvania patriot, under the signature of "One of the People," was making a similar appeal to the intelligence of that great State on behalf of the new Constitution. And how does he interpret this grant of power?

"The people of Pennsylvania, in general, are composed of men of three occupations—the farmer, the merchant, the mechanic. The interests of these three are intimately blended together. A government, then, which will be conducive to their happiness, and best promote their interest, is the government which these people should adopt. The Constitution now presented to them is such a one. Every person must long since have discovered the necessity of placing the exclusive power of regulating the commerce of America in the same body; without this it is impossible to regulate their trade. The same imposts, duties, and customs must equally prevail over the whole, for no one State can carry into effect its impost laws. A neighboring State could always prevent it. *No State could effectually encourage its manufactories* there can be no navigation act. Whence comes it that the trade of this State, which abounds with materials for ship-building, is carried on in foreign bottoms? Whence comes it that shoes, boots, made-up clothes, hats, nails, sheet-iron, hinges, and all other utensils of iron, are of British manufacture? Whence comes it that Spain can regulate our flour market? These evils proceed from a want of one supreme controlling power in these States. They will be all done away by adopting the present form of government. It will have energy and power *to regulate your trade and commerce*—to enforce the execution of your imposts, duties, and customs. Instead of the trade of this country being carried on in foreign bottoms, our ports will be crowded with our own ships and we shall become the carriers of Europe. *Heavy duties will be laid on all foreign articles which can be manufactured in this country*, and bounties will be granted on the exportation of our commodities; *the manufactories of our country will flourish*; our mechanics will lift up their heads, and rise to opulence and wealth."

And a little after this, in July, 1788, I find a "Bostonian" [American Museum, Vol. IV., page 331] advising duties on English importations, under the name of regulations and restrictions of trade for the encouragement of our own manufactures.

"The ill policy of our *commercial arrangements* has served to impoverish us in our finances, by the enormous remittances of our currency, occasioned an almost general bankruptcy, and has had the pernicious tendency to discourage our enterprise in manufactures, and ruined many of those branches which, during the war, had arisen to a flourishing

state."—"Our trade with that nation has been the principle source of all our misfortunes. It has thrown a number of our best estates into the hands of British merchants, has occasioned a most rapid decrease of our medium, has ruined our manufactures, and will, if pursued, sap the foundation of the best government that ever can be established in America. The first object, therefore, of the Federal Government must be to restrain our connection with Great Britain, unless on terms of reciprocity. While they continue their duties and prohibitions, *we must lay similar restrictions and embarrassments on their trade, and prevent, by excessive duties, the redundance of their manufactures.*"

Some time in the year 1783 or 1784, there were published in a Virginia newspaper, "Reflections on the policy and necessity of encouraging the commerce of the citizens of the United States," by St. George Tucker, of Petersburg. They are written with great vigor, good sense, and a true national spirit, and present a powerful argument for a discrimination in favor of American tonnage. Toward the close of the essay (page 274 of the 2d vol. of the American Museum), he adverts to another subject in the following terms:

"Before I conclude, let me call the attention of my reader for a moment to the debt due from America to the subjects of Great Britain, which I have heard estimated at four or five millions of pounds. This debt was accumulated from a balance in trade annually accruing to Great Britain from the causes hereinbefore pointed out. That trade must be destructive where such a balance continually arises against us. Surely it is proper to guard against such an event in future. This might be effected, in part, perhaps, by laying heavy duties, if not actual prohibitions, on the importation of such articles as are the produce of the United States. Is it not surprising, for example, that bar-iron, lead, saltpetre, leather, train-oil, soap, malt liquors, butter, beef, pork, and potatoes, should constitute a part of the annual imports from Europe to America?"

Did not this writer understand that legislation, for the purpose of turning the balance of trade in our favor, was a "regulation of trade," and is not the protecting tariff which he recommends exactly an instance of such legislation?

I spare you, sir, the infliction of more of these superfluous proofs. And yet the nature of the fact to be proved—that a whole people, a whole generation of our fathers, had in view, as one grand end and purpose of their new government, the acquisition of the means of restraining, by governmental action, the importation of foreign manufactures, for the encouragement of

manufactures and of all labor at home, and desired and meant to do this by clothing the new government with this specific power of regulating commerce—required and justified a pretty wide collection and display of their opinions, sufferings, expectations, and vocabulary, from sources the most numerous and the most scattered.

And now from the bosom of the people holding these opinions, oppressed by these incommodities, nourishing these hopes, determined on this relief, and speaking this language, arose the Constitution, immortal, unchangeable! In fulfillment of these hopes, it embodied the great governmental instrumentality which had been determined on, in the exact language which more than twenty years had made familiar. I say, then, sir, that when the country called the convention together which formed the Constitution, it was the *general design* to confer the protecting power upon the new government; that the governmental power to regulate trade was generally understood to embrace the protecting power; and it was inserted in the Constitution exactly because that was its meaning.

* * * * * *

I do not think, then, sir, that anybody will deny that, in the commercial, political, and general vocabulary of 1787, and of all the period back to 1764, a discriminating tariff—a tariff discriminating for the protection of domestic industry, was universally called a commercial regulation. Everybody will agree that if, at that time, it had been written or spoken that England, the States, or any other government upon earth, had the power to make a commercial regulation or to regulate commerce, it would have been universally understood (such was the settled form of speech) to include the power to make a strict protecting tariff, and that such a tariff would have been one of the most ordinary and most familiar acts in exercise of such power of regulation. But then it will be said that it does not follow that the same language means, in this Constitution, when applied to and asserted of this government, what it meant everywhere else, when applied to or asserted of any other government in the world. England, the States, under the power to regulate commerce, could make a strict and technical protecting tariff; Congress, under the same power, or rather, under the same exact form of expression—the same enunciation *in terms* of power—can do no such thing.

Sir, he who asserts this has the burden of proof heavily upon him. Independently altogether of the evidence which I have already presented, to show that the country looked directly to this power of regulating commerce as the precise power under and by which the new government was to tax or prohibit imports for the encouragement of manufactures; independently of that, when you admit, as you must, that, for more than twenty years before the Constitution was formed, this language was universally current in the colonies and States; that it had acquired, by force of circumstances, an unusually precise, definite, and well-understood sense; that it had all that time been employed to designate or to include a certain known governmental function; that when applied to England, the States, and all other governments, it had, in the understanding of everybody, embraced a certain species and exercise of power for a certain purpose—when you admit this, and then find it here in the Constitution of this government, employed to confer a power on it, must you not admit that the presumption is, that it is used in the sense which everybody had understood it so long to bear, when applied to other governments; neither larger nor narrower; that it means to include the same well-known function, and not to exclude it; that it means to communicate the same extent and the same purpose of power, and not less; the same in quantity, the same in object?

CHAPTER XIII.

NATURE AND EXTENT OF THE PROTECTING POWER—CONCLUDED.

The entire generation which participated, either in creating or in launching the new government, have uniformly testified, whenever they have expressed an opinion on the subject, that the power to regulate commerce, as granted to Congress in the Constitution, was well known and was designed to include what the British Parliament had always claimed and exercised, and what America had acquiesced in for over a century—*the power of favoring or prohibiting particular traffics, products, or fabrics, by duties on imports.*

This is the position which was taken by James Madison, who, as a member of the Federal Convention, as a constant sharer in the deliberations of that body, and as a signer of the original draft of the Constitution, must be supposed to have been thoroughly conversant with the meaning and intent of that instrument, in its several parts. How superlatively competent he was, in Daniel Webster's estimation, to expound the Constitution, is thus set forth by the great Massachusetts Senator, in his address, February, 1831, at the public dinner tendered to him in the city of New York:

> Mr. Madison, thanks to a kind Providence, is yet among the living, and there is certainly no other individual living, to whom the country is so much indebted for the blessings of the Constitution. He was one of the commissioners who met at Annapolis, in 1786, to which meeting I have already referred, and which, to the

great credit of Virginia, had its origin in a proceeding of that State. He was a member of the Convention of 1787, and of that of Virginia in the following year. He was thus intimately acquainted with the whole progress of the formation of the Constitution, from its very first step to its final adoption. If ever man had the means of understanding a written instrument, Mr. Madison has the means of understanding the Constitution. If it be possible to know what was designed by it, he can tell us. It was in this city that, in conjunction with Mr. Hamilton and Mr. Jay, he wrote the numbers of the Federalist; and it was in this city that he commenced his brilliant career under the new Constitution, having been elected into the House of Representatives of the first Congress. * * *

Having been afterward, for eight years, Secretary of State, and as long President, Mr. Madison has had an experience in the affairs of the Constitution, certainly second to no man. More than any other man living, and perhaps more than any other who has lived, his whole public life has been incorporated, as it were, into the Constitution; in the original conception and project of attempting to form it, in its actual framing, in explaining and recommending it, by speaking and writing, in assisting at the first organization of the government under it, and in a long administration of its executive powers—in these various ways he has lived near the Constitution, and with the power of imbibing its true spirit, and inhaling its very breath, from its first pulsation of life. Again, therefore, I ask, if he cannot tell us what the Constitution is, and what it means, who can?

When such a witness states, with the utmost deliberation, and in the most formal manner, that the protection of home manufactures by a tariff was intended to be a function of the power to regulate commerce; and especially when he cannot be contradicted by any other competent witness, but is corroborated on every material point, his testimony must be deemed conclusive. In his once famous though now forgotten letter to Joseph C. Cabell, under date of September 18, 1828,

he entered into the following details and arguments to support his views:

Your late letter reminds me of our conversation on the constitutionality of the power of Congress to impose a tariff for the encouragement of manufactures; and of my promise to sketch the grounds of the confident opinion I had expressed, that it was among the powers vested in that body. * * *

The Constitution vests in Congress, expressly, "the power to lay and collect taxes, duties, imposts, and excises," and "the power to regulate trade."

That the former power, if not particularly expressed, would have been included in the latter, as one of the objects of a general power to regulate trade, is not necessarily impugned by its being so expressed. Examples of this sort cannot sometimes be easily avoided, and are to be seen elsewhere in the Constitution. Thus the power "to define and punish offenses against the law of nations" includes the power afterward particularly expressed, "to make rules concerning captures, etc., from offending neutrals." So, also, a power "to coin money" would doubtless include that of "regulating its value," had not the latter power been expressly inserted. The term taxes, if standing *alone*, would certainly have included duties, imposts, and excises. In another clause, it is said, "no tax or duties shall be laid on exports," etc. Here the two terms are used as synonymous. And in another clause, where it is said "no State shall lay any imposts or duties," etc., the terms imposts and duties are synonymous. Pleonasms, tautologies, and the promiscuous use of terms and phrases, differing in their shades of meaning (always to be expounded with reference to the context, and under the control of the general character and manifest scope of the instrument in which they are found), are to be ascribed, sometimes to the purpose of greater caution; sometimes to the imperfections of language; and sometimes to the imperfection of man himself. In this view of the subject, it was quite natural, however certainly the general power to regulate trade might include a power to impose duties on it, not to omit it in a clause enumerating the several modes of revenue, authorized by the Constitution. In few cases could the "*ex majori cautela*" occur with more claim to respect.

Nor can it be inferred that a power to regulate trade does not involve a power to tax it, from the distinction made in the original controversy with Great Britain, between a power to regulate trade with the colonies, and a power to tax them. A power to regulate trade between different parts of the empire was confessedly *necessary;* and was admitted to lie, as far as that was the case, in the British Parliament; the taxing part being at the same time denied to the Parliament, and asserted to be necessarily inherent in the Colonial Legislatures, as sufficient, and the only safe depositories of the taxing power. So difficult was it, nevertheless, to maintain the distinction in practice, that the ingredient of revenue was occasionally overlooked or disregarded in the British regulations, as in the duty on sugar and molasses imported into the colonies. And it was fortunate that the attempt at an internal and direct tax, in the case of the Stamp Act, produced a radical examination of the subject before a regulation of trade with a view to revenue had grown into an established authority. One thing at least is certain, that the main and admitted object of the Parliamentary regulations of trade with the colonies was the encouragement of manufactures in Great Britain.

But the present question is unconnected with the former relations between Great Britain and her colonies, which were of a peculiar, a complicated, and, in several respects, of an undefined character. It is a simple question, under the Constitution of the United States, whether "the power to regulate trade with foreign nations," as a distinct and substantive item in the enumerated powers, embraces the object of encouraging by duties, restrictions, and prohibitions, the manufactures and products of the country? And the affirmative must be inferred from the following considerations:

1. The meaning of the phrase, "to regulate trade," must be sought in the general use of it; in other words, in the objects to which the power was generally understood to be applicable, when the phrase was inserted in the Constitution.

2. The power has been understood and used by all commercial and manufacturing nations, as embracing the object of encouraging manufactures. It is believed that not a single exception can be named.

3. This has been particularly the case with Great Britain, whose

commercial vocabulary is the parent of ours. A primary object of her commercial regulations is well known to have been the protection and encouragement of her manufactures.

4. Such was understood to be a proper use of the power by the States most prepared for manufacturing industry, whilst retaining the power over their foreign trade.

5. Such a use of the power, by Congress, accords with the intention and expectation of the States, in transferring the power over trade from themselves to the Government of the United States. This was emphatically the case in the Eastern, the more manufacturing members of the Confederacy. Hear the language held in the Convention of Massachusetts:

By Mr. Dawes, an advocate for the Constitution, it was observed: "Our manufactures are another great subject which has received no encouragement by national duties on foreign manufactures, and they never can by any authority in the old Confederation." Again, "If we wish to *encourage our own manufactures*, to preserve our own commerce, to raise the value of our own lands, we must give Congress the powers in question."

By Mr. Widgery, an opponent: "All we hear is, that the merchant and farmer will flourish, and that the mechanic and tradesman are to make their fortunes directly, if the Constitution goes down."

The Convention of Massachusetts was the only one in New England whose debates have been preserved. But it cannot be doubted that the sentiment there expressed was common to the other States in that quarter, more especially to Connecticut and Rhode Island, the most thickly peopled of all the States, and having, of course, their thoughts most turned to the subject of manufactures. A like inference may be confidently applied to New Jersey, whose debates in Convention have not been preserved. In the populous and manufacturing State of Pennsylvania, a partial account only of the debates having been published, nothing certain is known of what passed in her Convention on this point. But ample evidence may be found elsewhere that regulations of trade, for the encouragement of manufactures, were considered as within the power to be granted to the new Congress, as well as within the scope of the national policy. Of the States south of Pennsylvania, the only two in whose Conventions the debates have

been preserved, are Virginia and North Carolina, and from these no adverse inferences can be drawn. Nor is there the slightest indication that either of the two States farthest south, whose debates in Convention, if preserved, have not been made public, viewed the encouragement of manufactures as not within the general power over trade to be transferred to the Government of the United States.

6. If Congress have not the power, it is annihilated for the nation; a policy without example in any other nation, and not within the reason of the solitary one in our own. The example alluded to is the prohibition of a tax on exports, which resulted from the apparent impossibility of raising, in that mode, a revenue from the States, proportioned to the ability to pay it—the ability of some being derived, in a great measure, not from their exports, but from their fisheries, from their freights, and from commerce at large, in some of its branches altogether external to the United States; the profits from all which, being invisible and intangible, would escape a tax on exports. A tax on imports, on the other hand, being a tax on consumption, which is in proportion to the abilities of the consumers, whencesoever derived, was free from that inequality.

7. If revenue be the sole object of a legitimate impost, and the encouragement of domestic articles be not within the power of regulating trade, it would follow that no monopolizing or unequal regulations with foreign nations could be counteracted; that neither staple articles of subsistence, nor the essential implements for the public safety, could, under any circumstances, be insured or fostered at home, by regulations of commerce, the usual and most convenient mode of providing for both; and that the American navigation, though the source of naval defense, of a cheapening competition in carrying our valuable and bulky articles to market, and of an independent carriage of them during foreign wars, when a foreign navigation might be withdrawn, must be at once abandoned, or speedily destroyed; it being evident that a tonnage duty in foreign ports against our vessels, and an exemption from such a duty in our ports, in favor of foreign vessels, would have the inevitable effect of banishing ours from the ocean.

To assume a power to protect our navigation, and the cultivation and fabrication of all articles requisite for the public safety,

as incident to the war power, would be a more latitudinary construction of the text of the Constitution, than to consider it as embraced by the specified power to regulate trade—a power which has been exercised by all nations for those purposes, and which effects those purposes with less of interference with the authority and conveniency of the States, than might result from internal and direct modes of encouraging the articles; any of which modes would be authorized, as far as deemed "necessary and proper," by considering the power as an incidental power.

8. That the encouragement of manufactures was an object of the power to regulate trade is proved by the use made of the power for that object, in the first session of the first Congress under the Constitution; when among the members present were so many who had been members of the Federal Convention which framed the Constitution, and of the State Conventions which ratified it; each of these classes consisting also of members who had opposed, and who had espoused, the Constitution in its actual form. It does not appear from the printed proceedings of Congress on that occasion, that the power was denied by any of them. And it may be remarked, that members from Virginia, in particular, as well of the anti-federal as the federal party—the names then distinguishing those who had opposed and those who had approved the Constitution—did not hesitate to propose duties and to suggest even prohibitions in favor of several articles of her production. By one a duty was proposed on mineral coal, in favor of the Virginia coal pits; by another, a duty on hemp was proposed, to encourage the growth of that article; and by a third, a prohibition even of foreign beef was suggested, as measure of sound policy.

A further evidence in support of the constitutional power to protect and foster manufactures by regulations of trade—an evidence that ought, of itself, to settle the question—is the uniform and practical sanction given to the power, by the General Government, for nearly forty years, with a concurrence or acquiescence of every State government, throughout the same period; and it may be added, through all the vicissitudes of party which marked the period. No novel construction, however ingeniously devised, or however respectable and patriotic its patrons, can withstand the weight of such authorities, or the unbroken current of so prolonged and universal a practice. * * *

And may it not be fairly left to the unbiased judgment of all men of experience and of intelligence, to decide, which is most to be relied on for a sound and safe test of the meaning of the Constitution, a uniform interpretation by all the successive authorities under it, commencing with its birth, and continued for a long period, through the varied state of political contests; or the opinion of every new Legislature, heated as it may be by the strife of parties—or warped, as often happens, by the eager pursuit of some favorite object—or carried away, possibly, by the powerful eloquence or captivating address of a few popular statesmen, themselves, perhaps, influenced by the same misleading causes? If the latter test is to prevail, every new legislative opinion might make a new Constitution, as the foot of every new Chancellor would make new a standard of measure.

But Mr. Madison had not postponed the communication of his views on this subject until his old age. In his speech in Congress in 1789, upon the proposition to combine the objects of protection and revenue in the first tariff act, rendered famous by its preamble, declaratory of a purpose to encourage and protect manufactures, he said:

The States that are most advanced in population, and ripe for manufactures, ought to have their particular interests attended to in some degree. While these States retained the power of making regulations of trade, they had the power to protect and cherish such institutions. By adopting the present Constitution, they have thrown the exercise of this power into other hands; they must have done this with an expectation that those interests would not be neglected here.—*Gales and Seaton's Debates, old series, Vol. I., p. 116.*

So, too, when he had become President. In his second annual message, December 5, 1810, after adverting to a "highly interesting extension of useful manufactures, the combined product of professional occupations and of household industry," he observes, "how

far it may be expedient to guard the infancy of this improvement in the distribution of labor, by *regulations of the commercial tariff*, is a subject which cannot fail to suggest itself to your patriotic reflections." Thus, at the beginning, in the midst, and at the close of his career—as constitution-maker, as chief magistrate, as hoary and revered sage—he held the same opinion about the source, nature, and extent of the protecting power.

Gulian C. Verplanck, in his once celebrated letter to Colonel William Drayton, of South Carolina, November 1, 1831, piled proof upon proof to show that the whole generation contemporaneous with the new government were of one mind on this question. Below is part of his statement of facts and reasons:

Mr. Madison has told us, in his letter to Mr. Cabell, that the objects of our present tariff laws were "the objects to which this power was generally understood to be applicable, when the words were inserted in the Constitution." Mr. Gallatin, one of the earliest, and certainly one of the most consistent and able champions of free trade in this country, has stated in the conferences of the free trade committee, as I am told, and repeatedly in conversation with myself, that such he found, upon his first entrance into political life in 1783, to be the universal opinion of the statesmen who formed and of those who opposed the Constitution. In the debates of the first Congress under it, whilst the policy of laying protecting duties was strongly supported by some members, *all*, so far as I can gather from the reports, seemed to take the power for granted. Petitions for duties to foster manufactures were presented, meetings held, and societies formed for effecting that object; and, after diligent inquiry, I can find no trace of opposition or censure from the press or from the public on constitutional grounds, or any doubt anywhere intimated as to this power of Congress. The preamble of the first act imposing duties, reciting that they are laid, amongst other purposes, "for the encouragement of manufactures," has often been quoted. Merely as an expression of the opinion of the First Congress on this head, it is

doubtless entitled to great weight. But a circumstance which I have never seen or heard remarked upon strikes me with much greater force. There is no evidence of any opposition or proposed amendment to this assertion of power. It was not, therefore, simply the expression of the Federal majority of that Congress, who might on this, as on other points, be supposed to claim a liberal or latitudinarian construction of the Constitution, but shows strongly the general opinion of a legislature contemporary with the adoption of the instrument itself, and containing a bold, a vigilant, and an eloquent minority, jealous of the new Constitution, and opposing every extension of the authority of any of its branches. They opposed the Bank of the United States as unconstitutional; they opposed the President's power of removing his officers, without the consent of the Senate, as unconstitutional. In a succeeding Congress, the same men opposed the carriage tax as unconstitutional. On this preamble they were silent. It is, besides, remarkable that, in the very next year, when the first tariff act of the United States was repealed, and a higher scale of duties substituted, this preamble was recited and retained.

The nullification controversy, based on the claim that the tariffs of 1824 and 1828 were oppressive, unjust, and even unconstitutional, imposed upon the friends of the Union the task of investigating the origin, the character, and the limitations of the protecting power. Metaphorically, they had to dig down through forty years of eruptive overflow from the volcanoes of partisan politics, before they could lay bare the distinct outlines of this buried and forgotten Herculaneum of the Constitution, which had been as familiar as their own doorsteps to the first generation of American statesmen. About the time of those explorations, Andrew Jackson, in his second annual message to Congress, December 7, 1830, placed the intolerant and aggressive advocates of the revenue standard in the following predicament—a condition of awkwardness and difficulty from which they have never yet been able to extricate themselves:

The power to impose duties on imports originally belonged to the several States. The right to adjust those duties, with a view to the encouragement of domestic branches of industry, is so completely identical with that power, that it is difficult to suppose the existence of the one without the other. The States have delegated their whole authority over imports to the general government, without limitation or restriction, saving the very inconsiderable reservation relating to their inspection laws. This authority having thus entirely passed from the States, the right to exercise it for the purpose of protection does not exist in them; and consequently, if it be not possessed by the general government, it must be extinct. Our political system would thus present the anomaly of a people stripped of the right to foster their own industry, and to counteract the most selfish and destructive policy which might be adopted by foreign nations. This surely cannot be the case; this indispensable power, thus surrendered by the States, must be within the scope of the authority on the subject expressly delegated to Congress.

In this conclusion, I am confirmed as well by the opinions of Presidents Washington, Jefferson, Madison, and Monroe, who have each repeatedly recommended the exercise of this right under the Constitution, as by the uniform practice of Congress, the continued acquiescence of the States, and the general understanding of the people.

A year later, the morbid, inflammatory, dangerous excitement against the protective system had become so heated in South Carolina as to threaten to end in civil war. It was when such were the prospects on the Rubicon of Nullification that Gulian C. Verplanck, a Representative in Congress, published his argumentative letter to Col. William Drayton, who had openly stigmatized the tariffs of 1816, 1824, and 1828 as unconstitutional, and demanded their unconditional repeal as an act of tardy justice to the South. Below are some instructive extracts from this important letter:

I could never agree with many of those with whom I acted in

and out of Congress, in denouncing these measures as not only impolitic and unequal, but as unconstitutional. The question of the constitutionality or unconstitutionality of the protecting system appeared to me to have no connection with the broader question of the strict or liberal construction of the Constitution—with the admission or denial of those implied and constructive powers upon which our statesmen have heretofore differed. I looked upon it as a pure question on the meaning of words.

I argued thus: Congress is invested with the power "to regulate commerce with foreign nations and among the several States." To *regulate* is to govern the action of anything by fixed *rules*. But the authority to impose rules for the government of trade cannot be confined solely to the *manner* of carrying it on. It must include the right of designating the *persons* or *places* with whom it may be allowed, and the commodities on which it is to be employed. Had anything short of this been meant, the Constitution would have said, "that Congress shall regulate the *manner* of carrying on commerce with foreign nations"; just as, in another clause, it has confined legislative power in the choice of Senators in Congress to "regulating the times and manner" of election, to the exclusion of farther interference. But the regulation of the manner, the persons, the places, and the objects of commerce, comprehends, in its widest latitude, the whole protecting power. Then the imposition of duties is but the "necessary and proper means" expressly authorized by the Constitution to give effect to this substantive power. Those who understand the provisions of the Constitution as intending anything short of this, erred, I thought, by substituting in their minds a part for the whole—the idea of navigation simply for that of commerce—for they seemed to consider the laws of commerce as extending merely to shipping, transportation, and international communication, without reference to the commodities which form the objects of trade.

When it was denied, as you have lately done, that the power to regulate commerce could include the encouragement of manufactures, another and substantive part of public policy, it seemed to me to be a sufficient and satisfactory answer that it is upon commerce alone, not upon manufactures, that Congress has power to act; but the whole power of action upon that subject being given, the end or motive of such regulation is matter entrusted to

legislative discretion wholly; whether it be with the view of retaliating upon the unjust policy of other nations, or the encouragement of our own fabrics, or the preparation for war, or possibly the preservation of public health. This is a power, doubtless, exposed to perilous abuse, but still less so than that of war, or of direct taxation, or of contracting debt, and, like those, one which every nation has thought it expedient to lodge somewhere. Thus, a war debt, like that of England, would require imposts as onerous as any restrictive system can impose, coupled with the burdens of heavy excises and oppressive internal taxes. Yet the only guard against such abuse is to be found in the discretion of Congress, and the watchfulness of their constituents.

When to these objections it was added (as in the address of the late Free Trade Convention) that "the power to regulate could not include the power to annihilate the objects it was intended to protect," it seemed to me again to be a sufficient answer that no tariff as yet had in view the annihilation of commerce, but either the lopping off certain branches of it, or the turning them into new directions—the sacrifice frequently of a portion of foreign commerce, to promote and increase that "between the States." Nay, when I considered that great public emergencies might dictate the necessity of a long and almost universal embargo, for the sake of peace, or for the preservation of neutrality; for the preparation for war, or for protection against foreign pestilence, I hesitated even to deny the power of total prohibition, injurious as the abuse of it might be.

But, without going farther into speculative reasoning, I thought that the ordinary and habitual acceptation of the words used in our Constitution, as they are employed by good writers and in popular use, decidedly included this disputed power. It is remarkable that Adam Smith, the great father of the doctrines of free trade in their widest extent, in the very chapters and passages of his Wealth of Nations in which he denounces the restrictions and prohibitions of the British and other European tariffs, repeatedly and throughout calls them "regulations of trade"; that a similar use of the phrase is to be found in Burke, and almost all the English political economists and statesmen, down to our own days; that in the official commercial digests of the revenue laws of various countries, published both by the British

government and our own, the prohibitory and protecting tariffs are classed as commercial regulations; and that this use is so fixed and incorporated in our language, that even Dr. Cooper, of South Carolina, in that chapter of his work on political economy, in which he has summed up, with his accustomed power of lucid and condensed reasoning, all the arguments against encouragement of manufactures, by impost or restriction, expressly calls such "prohibitions on importation," "governmental regulations," and adopts as his own the very language of Adam Smith.—(*Cooper's Political Economy, page 107.*)

Nevertheless, the constancy and confidence with which the constitutionality of these laws was denied, the high and merited authority of many who maintained this doctrine, my own reluctance to allow to the federal government a power so subject to misuse; all combined to induce me—certainly not to change or suspend my opinion—but to prevent any confident public expression of it, and to keep my mind open to conviction. I could not but presume that there might yet be some argument to which I had not allowed its due weight, or some positive evidence of the intention of the framers of the Constitution, familiar to older and abler politicians, but which had not yet been stated in sufficient force to be clear to my mind. It was to this last mode of proof that I chiefly looked. Every day's experience had taught me that words, which appear to be the clearest and most direct that could be selected, may yet, from some fact or circumstance familiar to those who use them, have a peculiar or limited meaning, widely differing from that which they bear in general use.

It was in this disposition of mind, and whilst in search of some such external evidence of the intention of the founders of our Constitution, that I was accidentally led, by the perusal of the early Diplomatic Correspondence of the United States, lately published by order of Congress, into a discursive but extensive study of the history and state papers of the Revolution.

The outline of that glorious narrative is familiar to all of us from our childhood; but, judging from my own observation and experience, I fear our best educated citizens are more conversant with the contests of Roman or Athenian politics, or with the struggles of English liberty under the Tudors or Stuarts, than with the details of the story of our own independence, as set forth in

its original records—those models of political wisdom and simply majestic eloquence, the speeches and state papers of the American Revolution.

I cannot otherwise account for the strange oblivion of a fact, which I had myself hitherto overlooked, but the proof of which now flashed upon me from every quarter. It is this, that the words of our Constitution, conferring the several powers of "laying taxes, duties, imposts, and excises," and of "the regulation of commerce," were not accidentally selected, or used in any loose and popular acceptation, but that they were the earliest phrases of our independence, and had acquired, by repeated discussion, and legal and parliamentary use, a precise and definite meaning. Such being the established meaning, in this sense alone could they have been employed by the great men of the Revolution, who framed our Constitution; and in this sense alone they must have been received by the people who adopted it. In this peculiar sense, then, the imposition of duties for the restriction of foreign trade and the fostering of other interests was included.

* * * * * *

When, then, in 1787, the Convention selected these phrases to express the powers they meant to confer upon the new government, in what other sense than this could they have employed them? The members of that body were, all of them, men who must have been conversant with the discussions of which these phrases formed the watchword and the text. Many of them had themselves conducted those discussions. There was George Washington, their President; Hamilton, whose first political essay was said to have been an examination of the questions at issue between Great Britain and her colonies; Benjamin Franklin, John Dickinson, and Gouverneur Morris, of whose familiarity with this subject proofs have been above given.

It is worthy of observation that the chairman of the committee appointed to revise the style and arrange the articles of the Constitution, after the principles had been settled, was William Samuel Johnson, of Connecticut, who was doubtless selected for that post by the president of the Convention, from his union of legal eminence with distinguished literary acquirement; and this statesman had, in the Congress which met at New York, in 1765, drawn up a report on the object of American rights in relation to these very

points of taxation and regulation of trade, in which very report this distinction was strongly marked.

Now, to my mind, it seems plain that such men must of course have intended to use these phrases in the very same sense (neither wider nor narrower) which fifteen years of discussion had given them in England and America. They were familiar with the well-settled distinction in principle between the power of taxation for revenue, which they decried to the mother country, and that of laying duties for commercial regulation, which they allowed, whilst they complained of its oppressive use. At the same time, knowing from experience that it was practically difficult sometimes to draw the precise line between duties for regulation and duties for revenue, they meant to confer both powers upon the new government of their formation in the broadest latitude, and thus to cut off all doubt. This, therefore, they designed to do, not by implication or construction, but by words to which common use had then affixed the clearest sense.

They gave to Congress the authority to regulate commerce to the full extent of that power, as then understood, limited only by the accompanying words, "with foreign nations, among the several States, and with the Indian tribes," so that it might not, like some of the offensive British regulations, be directly exercised upon what might be strictly internal within the several States.

They gave also the power of "laying and collecting taxes, duties, and imposts, to pay the debts and *provide for* the common defense and *general welfare* of the United States." No disciple of the strictest school of republicanism can go beyond myself in opposing the unfounded and dangerous notion of "the power of providing for the general welfare" having ever been granted as a separate and sweeping authority of general legislation. But these words must have been intended for some purpose; and the history of our discussions with Great Britain seem to me to indicate clearly that they meant that taxation might be imposed, not merely for revenue, but to provide for the common good in relation to the several specific powers specially entrusted to Congress, that of commercial regulation being one of them. Thus, it might have been expected that there would be no room left for any of those doubts which had occasionally been raised under the British trade laws, whether any particular duty was imposed as a tax, or merely

as a regulation of trade. Yet the sense of these phrases, so familiar at that time, has already been clouded by the lapse of forty years. So vain are the precautions of human wisdom!

Among the men with giant faculties, who made thorough searches regarding the historical basis of the constitutional power to protect home industry by means of duties on imports, was Daniel Webster. Repeatedly, on public occasions, he gave voice, in words unmistakable and decided, to the conclusions which had grown out of his investigations. In his remarks to the citizens of Buffalo, June, 1833, he expressed his views thus:

> The protection of American labor against the injurious competition of foreign labor, so far, at least, as respects general handicraft productions, is known historically to have been one end designed to be obtained by establishing the Constitution; and this object, and the constitutional power to accomplish it, ought never in any degree to be surrendered or compromised.

In his address delivered to the citizens of Pittsburgh, July 8, 1833, he outlined another phase of the same subject, as follows:

> Gentlemen, it is an historical truth, manifested in a thousand ways by the public proceedings and public meetings of the times, that the necessity of a general and uniform impost system, which, while it should provide revenue to pay the public debt, and foster the commerce of the country, should also encourage and sustain domestic manufactures, was *the leading cause in producing the present national Constitution*. No class of persons was more zealous for the new Constitution than the handscraftsmen, artisans, and manufacturers.

Ten years later his views had become still more fixed and emphatic. In his address at the Whig convention held at Andover, November 9, 1843, he made the more pointed and detailed statement given below:

There are two propositions to which I invite your attention:

1. Congress has power to lay duties of impost. No State has this power. This is a most important consideration.

2. Before the adoption of the Constitution, and while the States could lay impost duties, several of them had laid such duties, with discriminations avowedly intended to foster their own products. They now can do no such thing. It must accordingly be done by Congress or not at all.

Now the power of Congress is to regulate commerce. And in all English history, and all our own history, down to the Revolution, and to the time of the adoption of the Constitution, importation of some articles was encouraged, and of others discouraged or prohibited, by *regulations of trade*. The regulation of trade, therefore, was a term of well-known meaning, and did comprehend the duty or object of discriminating, with a view to favor home productions. We find this to have been so, from the time of the Tudors and Stuarts down; and in America, the opinion I have stated was held by Otis, Adams, and the other great and eminent men of the Revolution. * * *

The whole history of the country from 1783 to 1788 proves this. That history is as important as that of any period of our national existence. We see in it the then infant States struggling under a load of debt incurred in the sacred cause of the Revolution, struggling under the extinction of commerce and prostration of manufactures, and struggling all in vain. These things produced that strong disposition which prevailed from 1784 to 1788 to establish a uniform system of commercial regulations, and extend also all proper encouragement to manufactures.

In his speech at the mass-meeting held at Albany, August 27, 1844, he sketched the nature and extent of the protecting power in these vigorous and decisive terms:

Now, in the early administration of the government, some trusts and duties were conferred upon the general government, about which there could not be much dispute. It belonged to the general government to make war and peace, and to make treaties. There was no room for dispute as to these powers; they were

liable to no great diversity of opinion. But then comes the other power, which has been, and is now, of the utmost importance—that *of regulating commerce*. What does that import? On this part of the Constitution there has sprung up in our day a great diversity of opinion. But it is certain that when the Constitution had been framed, and the first Congress assembled to pass laws under it, there was no diversity of opinion upon it, no contradictory sentiments. *The power of regulating commerce granted to Congress was most assuredly understood to embrace all forms of regulation belonging to those terms under other governments—all the meaning impleid in the terms, in the same language, employed in all laws and in the intercourse of modern nations.* And I consider it as capable of mathematical demonstration, as capable of demonstration as any proposition in Euclid, that the power of discriminating in custom-house duties, for the protection of American labor and industry, *was understood, not by some, but by all, by high and low, everywhere, as included in the regulation of trade.*

These extracts embody only a part of Daniel Webster's published utterances on the subject. He had a very clear conception of the conclusiveness of the historical method of treating this question, and he presented the results of his own investigations in many different points of view.

Another of the eminent and gifted men, who diligently explored the colonial, revolutionary, and subsequent sources of information, in search of the true meaning of the Constitution, was Rufus Choate. When he was ready to sum up his conclusions, he waved the magical wand of his descriptive power over that distant past, until the revived circumstances and emotions of those historic times came thronging into the enchanted procession of his words, saying, in his speech in the United States Senate, March 14, 1842, what follows:

I hold it to be susceptible of as rigorous, moral demonstration as any truth of history: 1. That, before the Constitution was pre-

sented to them, the people of this country, generally, demanded a government which should have power to mould their whole foreign intercourse into the most beneficial form, and, among other things, should have power to mould it into such form as might bring out American labor, agricultural, mechanical, manufacturing, navigating, and commercial, into its completest development, and for that end to make discriminating tariffs; 2. That when, at length, the doors of the Convention were thrown open, and the Constitution, the object of so many hopes, of so much solicitude, was presented to their eager view, they believed that they found in it just the power they had looked for so long, and they adopted it in that confidence; 3. That every member of the Convention itself supposed it to contain the power; and 4. That the new government, from its first organization, proceeded to execute it vigorously and usefully by a broad policy of protection openly avowed — protection of agriculture, protection of navigation, protection of manufactures; and that, although particular exertions of the policy were vehemently resisted on grounds of expediency, and although other national legislation was denied to be authorized by the Constitution, the power to push this policy to the utmost limit of Congressional discretion was never called in question for more than thirty, or certainly more than twenty years.

Sir, if this be so, and yet the Constitution contains no such power, vain is the search after moral truth — idle the attempt to embody the ideas of a people in the frame of their government, and in the language of their fundamental law. You were as wisely employed in writing them upon the clouds of the summer evening western sky, in the dream of seeing them carried round the world in the train of the next day's sun.

Well, is it not so? I have shown you already that the country demanded and expected beforehand a government which should possess this power; that it had done so for years; that the events of every hour, from the peace to the rising of the Convention, only increased the urgency of the demand, and the confidence of the expectation. I proceed to show, in the next place, that when at last the Constitution was given to the longing sight of the people, and they threw themselves upon it as a famished host upon miraculous bread, their faculties sharpened and prepared by so many years of discussions, and by the more instructive discipline

of suffering, stimulated to read by hope, and fear, and jealousy, and curiosity, then they thought they found in it this power. There it was, in the very language familiar to them from childhood—language associated, fast and imperishably, with the story of the long wrongs of England, the resistance of America, the great names of heroes and wise men, the living and the dead, with liberty, and with glory.

See if the fact is not so, and then see how resistless it is as *evidence* that the power really was there. Look into the press of that day—that day when men were great, and events were great; look into the newspaper press, and tell me if you find, anywhere, a whisper of complaint of any deficiency *of power in this regard in the new Constitution.* You have heard, in the selections I have read, something of what the people *expected;* do you find, by looking farther into the same source of evidence, that they were *disappointed* in their expectations? Fears there were—sickly fears, patriotic fears, and loudly uttered—that the Constitution was too strong; too strong for liberty. But who said that, in its protecting energy, it was too weak? Who complained that he did not find it clothed with the whole power of defense against other nations—defense against their arms, their policy, their pernicious trade, their extorted and pauper labor? I can only say that I have found no trace of such an objection.

Any one who has the hardihood, after becoming conversant with this extended and comprehensive showing of facts and authorities, to maintain that the Constitution does not authorize and require the protection of home industry by duties on imports, must be considered a person of unsound judgment, unfit to form an opinion on the subject. Evidence, prodigal in quantity and unexceptionable in quality, shows that, among the prerogatives expressly vested in Congress by the Constitution, is the power to enact a tariff for protection with incidental revenue, *necessarily included in the power to regulate commerce;* that protection and rev-

enue belong to entirely different branches of legislative authority; that, although duties on imports had long been universally recognized as a form of commercial regulation, protection by means of duties had never been designed to be an instrument for raising revenue; and that the several States had deprived themselves of the power of protection in order to confer that power upon the general government, with which it has remained to this day, else is extinct.

What is the expressed object of this power? It is to regulate commerce—to produce effects upon commerce by legislative action—not as an end in itself, but as means to an end, which is to develop, strengthen, and enrich the nation. It is, therefore, a power to *do* something; it was intended to be *exercised*, and maintained as a *living* principle. Since this power is prohibited to the States, it must have been conferred upon the general government with the view of being *efficiently and wisely administered so long as the Constitution should last*. This inherent and manifest purpose, which necessarily implies obligation on the part of Congress, would be assailed and vanquished by allowing the power to slumber in lethargy, or to decay by neglect, or to die out through disuse. To quote the glowing language of Choate: "The power which this whole country with one voice demanded to have inserted in the Constitution, and which they hailed as another Declaration of Independence; the power by which we are able to protect all our children of labor, on whatsoever fields they wipe the sweat from their brow; by which, as Washington foretold, we may hope to bind these States together, to run the race of freedom, power, enjoyment, and

glory with the nations, and to afford the example of a people, now counted by millions, every one of whom has work to do, and good pay for his work—this power must not be surrendered, must not sleep, till the Union flag shall be hauled down from the last mast-head!"

The entire matter may be condensed into the following propositions: Power to protect home industry by duties on imports was put in the Constitution by its founders in pursuance of a set purpose to put it there. Before the present Union was formed, the people demanded the insertion of that power; the people expected to find that power in the instrument; the Federal Convention conferred that power in words familiar from childhood to both statesmen and the people as fully expressing that power; the people adopted the Constitution, believing that power was in it; and the very first Congress, at its first session, in its first act of general legislation, proceeded to exercise that power in express terms, with avowed intent to give it practical shape. These are historical facts, which it would be useless to dispute; hence, the only sort of a tariff on imports, which conforms to both the letter and the spirit of the fundamental law, is *a protective tariff;* and "a tariff for revenue only" (which is a tariff for revenue without protection), by leaving altogether out of view the seminal purpose incorporated in the Constitution—by requiring that the trust therein for the benefit of home industry shall remain unexecuted, and be made a frustrated and nullified and impotent provision—is a kind of tariff never designed nor contemplated by the great builders of our political structure, and must be, therefore, a defeat of one of the principal objects in forming the present Union, and, by

unavoidable inference, in the nature of an unconstitutional measure. Protection is right; it was intended to be guaranteed by the organic law of the United States. The right should stand erect upon its feet, demand its honest dues, and fearlessly defy the wrong.

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